TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. [illegible]. 28

THE PULLMAN COMPANY, APPELLANT,

vs.

A. C. CROOM, COMPTROLLER OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED MARCH 20, 1911.

(22,577)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 15, 1912.

1 In the United States Circuit Court, Northern District of Florida.

To the Honorable the Judges of the United States Circuit Court in and for the Northern District of Florida:

Your orator, The Pullman Company, is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, and having its chief place of business in the City of Chicago, County of Cook, and State of Illinois, and brings this, its bill of complaint, against A. C. Croom, as Comptroller of the State of Florida and a citizen of said State, and thereupon your orator complains and says:

1. That your orator has complied with all of the statutes of the State of Florida requisite to its engaging in business in said State, and was on the first day of June, 1907, and for more than ten years prior thereto had been, ever since has been and now is, engaged in the business of furnishing parlor cars, dining cars, and sleeping cars to railroad companies for their use upon railroads, under written contracts for terms of years in the several States of the United States of America, and has been engaged in furnishing parlor cars, sleeping cars, and dining cars, under written contracts for terms of years, to railroad companies operating between points wholly within the State of Florida and between points in the State of Florida and points in other States of the United States; and in the business of furnishing to the passengers of railroad companies traveling in cars of your orator, sleeping and other accommodations and food and refreshment.

2. That the said A. C. Croom is the duly qualified Comptroller of the State of Florida, residing at Tallahassee, the Capital of said State, and, among his duties, is charged with the collection of all sums due the State of Florida for taxes from Railroad, Telegraph and Sleeping Car Companies

2 3. Your orator further represents and avers that Chapter 5597 of the Laws of Florida, approved June 18, 1907, provides, among other things, for the payment to the State of Florida of license taxes enumerated therein, towit: Sleeping and parlor cars, $25.00 for each car; with buffet, $40.00 each car; dining cars, $20.00 each; and provides that no person, firm, or corporation shall engage in or manage the business, profession or occupation mentioned in said chapter, unless a State license shall have been procured in the manner therein defined; and among other things it is provided that the person, firm or corporation so engaged in or managing the business, profession or occupation engaged in, shall pay such license taxes before a license therefor shall issue; and that in pursuance of the provisions of said law your orator paid State and County license taxes for the year provided for in said chapter, and succeeding years, as follows, towit: For the year which expired on the first day of October, 1909, the amount of $3799.00 on 32 sleeping cars, 21 parlor cars with buffet, 21 sleeping cars with buffet, and two dining cars; for the year which expired on October first, 1910,

the amount of $3634.75 on 46 parlor and sleeping cars without buffet, 30 parlor and sleeping cars with buffet, and three dining cars; and for the year expiring October first, 1911, the amount of $2524.75, for 19 sleeping cars without buffet, 30 sleeping and parlor cars with buffet; all of which were used wholly in the State of Florida or between points in the State of Florida and points in other States, and in which were furnished accommodations to persons traveling therein from points in the State of Florida to other points in said State, as well as between points in the State of Florida and points in other States, and food and refreshments to persons traveling; and that said sum of money was paid by your orator for the privilege of engaging in business and using said cars within the State of Florida.

4. Your orator further represents and avers that Section 46 of Chapter 5596 of the Laws of the State of Florida for 1907, also provides for the assessment, levy and collection of an ad valorem tax upon the sleeping and parlor cars and other cars of Sleeping and Parlor Car Companies, and that your orator's cars were, in
3 pursuance thereof, assessed and taxed for the year ending on the 31st day of December, 1909, and that your orator has paid $1320.80 to said State of Florida and $3101.50 in the aggregate to the various Counties of said State in and through which such cars ran during said year, amounting in all for State and County taxes to $4422.30 which your orator has paid as an ad valorem tax on such cars in the said State of Florida for said tax year 1909; and has paid to the State of Florida and to the several Counties thereof through which its cars have run all ad valorem taxes subsequently accruing and due to the State, and the said several Counties, except in the Counties of Nassau and Leon, and in these Counties the taxes have not been paid because your orator has been unable to get the bills and amounts from the Tax Collector, and will pay same as soon as the amounts due are ascertained, the amount paid the State of Florida being $1530.65, the amount paid to the Counties, excepting Nassau and Leon, being $3642.79; and that said tax was levied on the full assessed valuation of said property at the regular rates and percentages of taxes levied upon other property within the State and in the various Counties respectively in which said taxes were paid.

5. Your orator further represents that by Act approved June 1, 1895, the Legislature of the State of Florida provided that all Sleeping and Parlor Car Companies should pay into the State Treasury the sum of $1.50 upon each One Hundred Dollars of gross receipts of said Companies derived from business done between points in the State of Florida; and by sundry amendments said law was re-enacted and incorporated in the Acts of the Legislature of the State of Florida, being Section 47 of Chapter 5596 of the Laws of Florida, approved June 18, 1907, and is as follows:

"All sleeping and parlor car companies operating their cars in this State shall, on or before the first day of January, 1908, and annually thereafter, report to the Comptroller of the State of Florida, under oath of the Secretary or other officer of such company, the total

amounts of their gross receipts derived from business done between points in this State; and at the same time shall pay into the State Treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts, and if any such company shall fail to make such report to the Comptroller and pay the tax thereon as herein provided, the Comptroller shall estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties
4 thereon, the same as other delinquent taxes are collected."

6. Your orator further represents that the only sections of the Constitution of the State of Florida relating to taxation and the powers of the Legislature in regard thereto and to the subject of taxes, are as follows:

"ARTICLE IX.

"*Taxation and Finance.*

"SECTION 1. The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

"SECTION 5. The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation. But the cities and incorporated towns shall make their own assessments for municipal purposes upon the property within their limits. The Legislature may also provide for levying a special capitation tax, and a tax on licenses. But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes."

7. Your orator further represents that it is advised by Counsel that the Legislature of the State of Florida has only such powers in regard to enactments as are authorized by or find warrant in the Constitution of the State, and that said statutes so providing for the payment of $1.50 — each One Hundred Dollars of gross receipts of Sleeping and Parlor Car Companies derived from business done between points in the State, is not authorized by and does not find any warrant in any of the Sections of said Constitution hereinbefore quoted, or in any Article, Clause, Section or part of said Constitution, and that said statute seeking to impose said tax of $1.50 upon every One Hundred Dollars of gross receipts, as before stated, is not a valid exercise of constitutional power on the part of the Legislature of the State of Florida, and said statute is invalid, void and of no effect, and would, if enforced, deprive your orator of its property without due process of law, in violation of the XIV Amendment of the

Constitution of the United States, the protection of which your orator invokes.

8. Your orator further represents that said statute covering the payment of $1.50 upon each One Hundred Dollars of the gross receipts of Sleeping and Parlor Car Companies, as hereinbefore
5 mentioned, provides, among other things, that the Companies operating their cars in the State shall, on or before the first of January, report, under oath of the Secretary or other officer of such company, the total amounts of its gross receipts derived from business done between points in the State, and that upon failure to make such report and to pay the tax thereon the Comptroller shall estimate the amount of such gross receipts from such information as he may obtain, and shall add ten per cent thereto as a penalty for failure to make such report, and proceed to collect said tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected, and that the "delinquent" so mentioned refers to the method of collecting taxes upon Railroad Companies, and is as provided in Section 18, Chapter 5596, of the Laws of Florida, approved June 18, 1907, which is as follows:

"If any taxes on any railroad or any part thereof in this State shall not be paid on or before the first Monday in April of any year, the Tax Collector of any County wherein such taxes may be due shall send a certificate of the amount thereof to the Comptroller, including in said certificate the amount of State and County taxes, and special school district taxes and other special taxes. The Comptroller shall have the power upon the receipt of the certificate or certificates from the Tax Collectors as aforesaid, to issue a warrant directed to the Sheriff of any County where such defaulting railroad or any part thereof may be located, commanding him to collect by levy and sale, in the same manner as is now provided by law for the sale of property under execution from the Clerk of the Circuit Court of the shops, fixtures, rolling stock or any part thereof as may be located in this State, the full amount of taxes due thereon, or of the entire road or such part thereof, including the costs and expenses of sale, and the proceeds of such sale, after deducting the fees and costs as provided by law, shall be forwarded by such Sheriff to the Comptroller, who shall pay the State taxes into the State Treasury, and the county taxes and district school taxes and other special taxes to the County Treasurer of each county in which such taxes were assessed, according to the assessment, and the surplus after such payments are made, if any, shall be paid over to the authorities of such defaulting Railroad.

"The fees of the Sheriff in the execution of the warrant provided for in this section shall be the same as provided by law in the case of executions from the Clerk of the Circuit Court, which fees, together with the costs, shall be included with the taxes in the amount to be collected from the defaulting railroad: Provided, further, That whenever any person or persons shall become the purchaser of any car, engine or other rolling stock of any such company or corporation at any such sale, such purchaser shall have the right to require of any such company or corporation the transportation of any car,

engine or other rolling stock to any point along the line of such railroad at a cost of not to exceed eight cents per mile; and that the Sheriff shall take corporal possession of the property levied on under this section, and on selling the same, or any part thereof, shall deliver it into the actual possession of the purchaser upon his paying the amount bid therefor at such sale, and in case no person shall bid
6 the amount of taxes due, including the costs and expenses of sale, the property shall be bid off for the Comptroller of the State, and shall be delivered to the Comptroller and the Governor and Comptroller shall dispose of, sell and convey the same in such manner as in their judgment may be to the interest of the State. The provisions of this section, in so far as they relate to the sale of railroads for unpaid taxes, shall apply to all taxes assessed heretofore or that may be hereafter assessed."

9. That said Section 48 of Chapter 5596 of the Acts of the Legislature of the State of Florida of 1907, providing for the collection of taxes by the Comptroller, follows the Section of the same Act which makes provision requiring the payment by Sleeping Car and Parlor Car Companies in the State of Florida of $1.50 on each One Hundred Dollars of the gross receipts derived from business between points in said State, as hereinbefore set forth.

10. That under and by virtue of said Act of the Legislature and Section 48 thereof governing the collection of said tax of $1.50 on each One Hundred Dollars of the gross receipts, as before mentioned, a suit is not essential to the collection of the tax and the penalty provided for upon default in reporting the total amount of gross receipts and the payment of the tax thereon, as provided in and by Section 47 of Chapter 5596 of the Acts of the Legislature of the State of Florida of 1907, and no action lies to recover back this tax if paid, or the tax and penalty if paid, after same have been collected by levy and sale under the Comptroller's warrant, as provided in Section 48, or have been voluntarily paid.

11. Your orator is advised that the Supreme Court of the State of Florida has heretofore decided that taxes paid cannot be recovered from the Collector to whom paid, under the laws of the State of Florida, even though the Collector has not paid the money over to the State; and has further held that no action may be had against a State officer or State officers in their official capacity to recover money alleged to have been collected illegally for taxes, as such suit is, in effect, a suit against the State.

12. That there is no provision of law of the State for a hearing of
7 any kind or character either before the issuance of a warrant by the Comptroller to collect said tax provided for in said Section 47 of Chapter 5596, or after the issuance thereof, and no method provided by law for in any way contesting the legality of said tax, or of being heard in any wise in regard thereto, and no method, under any procedure known to the law of the State of Florida, at law, of contesting or questioning the legality of said tax or the statute under which it is sought to be collected, or to contest or question the legality of the Comptroller's warrant issued to collect said tax and penalty.

13. Your orator is advised that when a warrant for collection, or execution, is issued in ordinary proceedings at law, an affidavit of illegality may be filed to said warrant or execution, and that then, under the orderly practice and procedure, the warrant or execution, as the case may be, and affidavit of illegality so filed, would be returned to the Court issuing the warrant or execution, and the issue may be made by the affidavit of illegality tried before the Judge presiding over the Court whence such warrant or execution issued, with the right to have the decision of the said Judge reviewed by the highest appellate court of the State; but that to the warrant issued by the Comptroller under Section 48 of Chapter 5596, for the collection of said tax provided for in said Section 47 of the same Act, an affidavit of illegality is not authorized, nor any other method of contesting same provided for, and no affidavit of illegality may be filed thereto, and any attempt to file same would be futile, and if filed in fact with a Sheriff who, under said Section 48, is directed to execute said warrant, there is no court provided to which it could be returned, and no court or tribunal provided for in which the issue sought to be raised may be heard.

14. That the only statute of the State of Florida authorizing the contest of taxes is Section 2006 of the General Statutes of the State of Florida of 1906, as carried forward from the Acts of the Legislature of the State of Florida on January 4, 1848, and now in force, and which is as follows:

"In all cases where assessments are made against any person, body politic or corporate, and payment of the same shall be refused upon allegation of the illegality of such assessment, such person, body corporate or politic, may apply to the Judge of the Circuit Court by petition setting forth the alleged illegality, and present the same, together with the evidence to sustain it, and the Judge shall decide upon the same, and if found to be illegal shall declare the assessment not lawfully made."

15. That said Section 2006 has no application to the tax provided for by Section 47 of Chapter 5596, hereinbefore set forth, and is limited in its application, as adjudicated by the Supreme Court of the State of Florida, its highest Appellate Court, solev to illegal assessments existing at the time the petition is filed as provided in said Section 2006, and does not even apply to subsequent illegalities, or any illegality of procedure or method of collection of a tax questioned, and in no way affords any opportunity of contesting or questioning the validity of Section 47 of Chapter 5596 of the Acts of 1907, as hereinbefore set forth, or of questioning the legality or power of the Comptroller under said Sections 47 and 48 of Chapter 5596, of the Laws of Florida, and that there being no method, either by statute or under the orderly method of procedure at law to test the validity of said Sections 47 and 48 of Chapter 5596 of the Acts of 1907, or of contesting or questioning the act or any of the acts of the Comptroller taken under and by virtue of said Chapter 5596 of the Laws of Florida in a seizure or sale of the property of your orator for a failure or refusal to report to the Comptroller, under oath of the Secretary or other officer of the Company, the total amount of its gross re-

ceipts derived from business between points wholly within the State of Florida, or to pay said tax or said tax and penalty when a report has not been made as provided by said Section 47, and no method of procedure to contest or question any action on the part of said defendant, as Comptroller of said State, in seizing and selling or either seizing or selling the property of your orator or, by any means, enforcing the collection of the tax provided for by said Section 47, any such action on the part of said Comptroller would be the taking of your orator's property without due process of law, in violation of the XIV Amendment of the Constitution of the United States, which your orator specially invokes in its behalf, and your orator is remediless except in a court of equity.

9 16. Your orator shows that there is no provision of law for or method authorized for a hearing before the issuance by the Comptroller, under Section 48 of Chapter 5596 of the Laws of Florida, of his warrant commanding the Sheriff of the County, to whom it is sent, to levy upon and sell the property of your orator for the tax, or tax and penalty, claimed under and by virtue of said Section 47 of said Chapter 5596 of the Laws of 1907, and no provision of law or procedure at law provided or authorized by which the issuance of said warrant by the Comptroller could be prevented, or the right to issue same contested, or by which a sale under said warrant could be stayed or held up until the rights of your orator could be heard and determined by a court of competent jurisdiction, and that under and by virtue of said Sections 47 and 48 of Chapter 5596, as hereinbefore set forth, the property of your orator may be taken without your orator having had its day in court or any opportunity offered, before or after any sale made under said warrant, of having a day in court to be heard as to any question of the legality or right of the acts and conduct of the Comptroller, his agents, servants or attorneys, in the seizure and sale of your orator's property.

17. That your orator is not a common carrier, and does not transport passengers or property at any place or at any time, and does not own or operate any railroad or any part of any railroad upon which its cars are used, but that it furnishes parlor cars, dining cars, sleeping cars, and cars with buffét, and in all of said cars convenient appendages for persons traveling; and that it furnishes such cars to the railroad companies over whose lines its cars are used for the use of such railroad companies in carrying their passengers; and that in its sleeping cars and parlor cars it furnishes berths for sleeping and designated seats to and for persons traveling in such cars; and necessary and convenient toilet facilities; and in such cars which are equipped with buffét it furnishes food and refreshments; and in its dining cars furnishes meals, lunches, food and refreshment; and by all of said service materially contributes to the comfort, convenience and pleasure of persons traveling in its cars; for which service and accommodations furnished it charges and receives compensation.

10 18. That your orator's cars are used upon and over lines of railroad operated in the State of Florida, and it derives receipts from its cars of the several kinds hereinbefore mentioned, and

has heretofore, and ever since the passage of the Act of the Legislature of the State of Florida approved June 1, 1895, providing therefor, annually, without objection, made the report and paid to the State of Florida the sum of $1.50 on each One Hundred Dollars of such receipts as provided by the said Act of 1895, and the acts and laws amendatory thereof and acts which have re-enacted said provision. That during all of said time prior to the enactment of the Laws of Florida for 1907, towit, Section 46 of Chapter 5596 thereof, there was no provision in the Laws of Florida for the taxation of the cars of your orator, and its cars were not during said period, taxed by ad valorem, and no tax was imposed on said cars except said tax of $1.50 on each One Hundred Dollars of the receipts of your orator, which tax, in the absence of provision of law for any other property tax, although not authorized or warranted by any provision of the Constitution of said State of Florida, might well have been taken, and was by your orator taken to be in effect a commuted method of collecting a tax on its property, and taken to be in fact, though not specially provided by law, in lieu of other taxes thereon, but that in and by the Revenue Act, passed by the Legislature of the State of Florida in 1907, towit, by Section 46 of said Chapter 5596, an ad valorem tax was imposed on the cars of Sleeping and Parlor Car Companies, and under that provision your orator has paid ad valorem taxes on its said cars within the State of Florida, as more fully set forth in paragraph 4 of this bill of complaint, and that your orator has continued to pay said tax of $1.50 on each One Hundred Dollars of its receipts as provided in and by said acts hereinbefore referred to until it was advised that said Section 47 of Chapter 5596 of the Laws of 1907 was not a constitutional exercise of power by the Legislature of the State of Florida, and that any and all proceedings to collect the tax provided for in said Section 47, or to take or seize your orator's property under authority thereof, or under any warrant issued pursuant to Section 48 of said Chapter 5596 to carry out the pro-
11 visions of said Section 47, would be a proceeding and taking and seizure under a void Act of the Legislature of the State of Florida, for the reason of said Act, towit, said Section 47, is not authorized under any provision of the Constitution of the State of Florida, but on the contrary by the limitations imposed in said Constitution said Act is in effect prohibited, and also for the reason that no way is provided by which a hearing could or can be had to contest the legality of said Act as hereinbefore more fully set forth; and that any such taking or seizure of your orator's property would be a proceeding without due process of law, and in violation of the XIV Amendment of the Constitution of the United States, the protection of which your orator invokes.

19. That acting under advice of Counsel, as to its rights in the premises, your orator has not made any return on or before the first day of January, 1910, nor made a report under oath of its Secretary or other officer, or otherwise, of the total amount of its gross receipts derived from business done between points in the State of Florida, and has not paid into the Treasury of the State the sum of $1.50 upon each One Hundred Dollars of said gross receipts, and does not

intend to do so, and by reason of your orator's failure and refusal to make such report of its gross receipts, and to pay the sum of $1.50 upon each One Hundred Dollars of said gross receipts derived from business done between points in the State of Florida, a condition has arisen and exists under which said Section 47 of Chapter 5596 provides that the said A. C. Croom, as Comptroller, shall estimate the amount of your orator's gross receipts, from such information as he may be able to obtain, and to add ten per cent to the amount of such tax as a penalty for your orator's failure to make report under said Section 47 of Chapter 5596 of the Laws of Florida, and under and by virtue of Section 48 of said Chapter 5596 to issue a warrant directed to the Sheriff of any County in the State of Florida where any of your orator's cars may be located, commanding him to collect by a levy and sale of your orator's cars, or any part thereof that may be located in the State of Florida, the full amount of said
12 tax at the rate of $1.50 upon each One Hundred Dollars of the gross receipts derived from business done between points in the State of Florida, or such sum as the Comptroller may have fixed as such gross receipts, under said Section 47, in default of a report being made as therein provided, and a penalty of ten per cent added to said tax, together with the costs and expenses of sale.

20. Your orator further shows that under said Section 48 of Chapter 5596 of the Laws of Florida, when the warrant of the Comptroller shall be issued and shall come to the hand of the Sheriff to whom it may be directed, it becomes his duty to levy same upon the cars or other property that your orator may have in the State of Florida, and that upon making a levy upon cars he is required to and will take corporal possession of your orator's cars, and he is required by said Section 48, hereinbefore referred to, to make physical delivery of said cars to any purchaser buying under the sale had under and by virtue of the Comptroller's warrant, and in case no person shall bid the amount of the tax and penalty due, including the costs and expenses of sale, the property shall be bid off for and delivered to the Comptroller to be disposed of by the Comptroller and the Governor of the State as in their judgment may be to the interest of the State.

21. Your orator further shows that the only property it has in the State of Florida consists of its cars and equipment, and appliances for furnishing meals, food and refreshment, parlor car chairs, berths, bedding, towels and other toilet facilities, and the desks and furniture in its office of small value and inadequate to pay more than a small part of the sum that would be required to satisfy any warrant which would be issued, as set forth in paragraph 19 of this bill of complaint; and therefore your orator avers that it has no property other than its cars upon which a levy could be made under the Comptroller's warrant if issued in pursuance of Sections 47 and 48 of Chapter 5596 of the Laws of Florida.

22. That owing to the fact that your orator's parlor, dining and sleeping cars are being used on railroads in all of the States of the Union under contracts for specific and different runs and
13 routes, and under definite time contracts, and that all of its cars in repair and good condition assigned for service on such

routes are in daily use on said runs and routes in different States in the Union, your orator is not able to supply other cars to take the place of cars in actual service in the State of Florida should said cars be seized and taken into corporal possession by the Sheriff of any County under warrant provided to be issued as set forth in Section 48 of Chapter 5596 of the Laws of Florida, and that the seizure of its cars or any one or more of its cars, under any warrant or proceedings inaugurated under said Sections 47 and 48 would result in destruction of your orator's service and business in the State of Florida, and cause irreparable damage, damage of a character that could not be measured in a money value even if your orator had a remedy by an action at law to recover same, and which, as hereinbefore set forth, is not given to it under the laws or procedure under the laws of the State of Florida; and that a seizure of its cars would correspondingly inconvenience and disturb the traveling public and be a wide-spread and far-reaching disaster, paralyzing your orator's whole system in the section of country wherein Florida is situated and practically destroying same in the State of Florida, and forcing into idleness employés engaged as conductors, porters, cooks, waiters and agents; and that your orator is remediless to prevent action under said Sections 47 and 48 of Chapter 5596 of the Laws of Florida, and to prevent irreparable injury and damage and disaster coming to it from a procedure by the defendant A. C. Croom, as Comptroller, under and by virtue of said Sections 47 and 48 of Chapter 5596, except in a court of equity.

23. Your orator further shows that by the peculiar construction of its dining, parlor and sleeping cars, by reason of the design thereof being adapted particularly and specially to the purposes for which they are used and the service in which they are employed, as hereinbefore set forth, no day or ordinary coach can be substituted for them or supply their place and the purpose they serve, and no other car is in use in the State of Florida, or in the United States, available to your orator, suitable or capable of taking or sup-
14 plying the place of its cars should it be deprived of their use under any proceeding of the said A. C. Croom, as Comptroller of the State of Florida, under said Chapter 5596 of the Laws of Florida.

24. Your orator further shows that should its cars, or any of them, be seized under a procedure under and by virtue of said Chapter 5596 of the Laws of the State of Florida, there is no method provided under the laws of the State of Florida by which it could give bond and be restored to the possession of its cars until the day of sale arrived under the statute authorizing the Comptroller to issue his warrant and levy upon your orator's cars, but that the Sheriff would have corporal possession of same and retain the physical possession of same during all the time intervening between the seizure and sale of the cars, and which, under the law, would not be less than thirty days, even if expedition were exercised by the officer executing said warrant, and might be, and more probably would be, for a period of more than forty days, and might be as long as sixty days, or more, accordingly as the officer executing the warrant was or was not ex

peditions; and during said time said cars would be tied up and out of service, and your orator's business destroyed and its employés scattered, and incalculably irreparable damage ensue before any future organization of its service could be effected.

25. Your orator further represents that at no stage of the proceedings under said Sections 47 and 48 of Chapter 5596 of the Laws of Florida, of 1907, is there any provision made by which your orator can be heard on the question of the amount of its tax or the constitutionality of the law under which it is fixed, since in the event that your orator did make a return as required by said Section 47 of Chapter 5596, the Comptroller is authorized by said Act to reject said return and fix the amount of gross receipts at such a sum as he may deem proper; nor is opportunity given by said Act of the Legislature to test the validity and honesty and fairness of the tax before it becomes a fixed and permanent lien and charge upon the cars of your orator and before the Comptroller fixes the gross receipts of your orator and adds a penalty thereto and issues his warrant to the Sheriff of any County in which your orator's cars may be and have same levied upon and taken into physical custody and your orator deprived of its property without any warrant of law, but by virtue of a force that it could not resist and without any method provided at law by which it could be heard.

26. And your orator further represents that aside from the fact that no provision is made by the laws of the State of Florida by and through which your orator might be heard on the question of the amount of tax to be collected by the State through its Comptroller, as hereinbefore set forth, by and under the terms of said Section 47 of Chapter 5596 of the Laws of Florida, there is no limitation upon the judgment or discretion of the Comptroller in estimating the amount of your orator's gross receipts, and under and by virtue of said Section 47, the said Comptroller may arbitrarily estimate the amount of your orator's gross receipts, and no way of being heard upon the question of the correctness or accuracy of the said Comptroller's estimate is provided by the laws of the State of Florida in the event that your orator should fail to make a report to the said Comptroller before the first of January of any year of the total amount of gross receipts derived from business done between points in the State of Florida, and under the terms of said Section 47 your orator is not allowed to make a report of its gross receipts outside of and independent of the payment of the tax assessed upon the basis of any amount at which the Comptroller may fix the gross receipts of your orator arising from business between points in the State of Florida, without any limitation upon his descretion or judgment, but your orator is required by said Section 47 at the time of making the report to the Comptroller of its gross receipts derived from business done between points in the State of Florida, in the event it made a report, actually to pay the tax, and for the recovery back of which when paid under said void law no method or procedure is provided or recognized by the laws of the State of Florida, but, on the contrary, the right to recover same back is actually denied, and this construc-

tion has been and is upheld by the Supreme Court of the State
16 of Florida, the highest Appellate Court in the State.

27. And your orator further alleges that it is advised that aside from the fact that said Section 47 of Chapter 5596 is void by reason of the lack of constitutional authority to enact same, it would be void by its terms even if there had been warrant of authority for the enactment, which is denied, for the reasons hereinbefore set forth, by reason of a lack of any opportunity at any time to be heard upon any question connected with the tax sought to be collected thereunder, and its absolute lack of any provision for contesting any question regarding the tax imposed thereunder, either before or after its imposition, and the absolutely hopeless position of your orator in any way at law to protect its property from sale under any warrant that the Comptroller may issue under said Section 47 of Chapter 5596, should your orator fail to make a report and pay the tax as therein provided, or to be heard at law as to whether its property is amenable to sale for a failure to make such report and pay such tax, or even to relieve its property by bond pending its advertisement for sale under any warrant that the Comptroller may issue and relieve same from seizure thereunder by the Sheriff, as is hereinbefore more fully set forth.

28. Your orator further represents that a denial to your orator of the relief hereinafter prayed for in this bill of complaint, would leave your orator wholly without a remedy of any kind or character, and to the disposition of the said A. C. Croom, as Comptroller of the State of Florida, within the limits of his discretion, and take from your orator the use of its cars and prevent your orator from performing its contracts with the railroad companies with which your orator has contracted to furnish cars, and from furnishing the public with accommodations and service in its cars as hereinbefore specified, as it could not supersede the refusal of this court to grant the relief hereinafter prayed, by a bond upon an appeal being taken to the United States Circuit Court of Appeals for the Fifth Circuit, and your orator would be placed in the dilemma of paying the tax and
17 thereby surrender its rights, since upon the payment of the tax there would be no question left to litigate, or upon a refusal of the relief herein prayed, refuse to pay the tax and enter an appeal to the United States Circuit Court of Appeals without the right to supersede the order refusing the relief prayed, and permit its cars to be seized by the sheriff or Sheriffs to whom the said A. C. Croom, Comptroller, might send his warrant or warrants and to be taken into physical custody and sold and thereby wholly lost to your orator, and prevent your orator's performance of its contracts, and the furnishing of accommodations and service to the public as hereinbefore set forth.

29. That your orator not having made any report before the first days of January 1910 and 1911, to the said A. C. Croom, as Comptroller of the State of Florida, of the total amount of its gross receipts derived from business done between points in the State of Florida, and not having paid into the State Treasury the sum of $1.50 upon each One Hundred Dollars of the gross receipts

received by your orator from business done between points in the State of Florida, as is provided in and by Section 47 of Chapter 5596 of the Laws of Florida, the said A. C. Croom, as Comptroller of the State of Florida, has demanded, by wire, that these reports be sent in at once; and if not sent in, he will at once proceed to make an estimate of the amount of the gross receipts of your orator derived from business done between points in the State of Florida from such information as he may be able to obtain and add ten per cent to the amount of tax that would be due under such estimate at the rate of $1.50 upon each One Hundred Dollars of said estimate, as a penalty for the failure of your orator to make a report of its gross receipts and to make payment as provided in and by said Section 47 of Chapter 5596 of the Laws of Florida, and that he will then immediately issue his warrant to the Sheriff of a County in Florida in which your orator's cars may be located, commanding him to collect, by a levy upon and sale of your orator's cars, the

18 tax so fixed by the said Comptroller on said estimated gross receipts of your orator, as hereinbefore set forth, together with ten per cent thereof added thereto as a penalty, and pending a sale under said warrant will cause your orator's cars to be taken into the physical custody of such Sheriff and wholly deprive your orator of the use thereof, and your orator charges that unless the said A. C. Croom as Comptroller of the State of Florida, is restrained by the order of this Honorable Court from so doing he will proceed to estimate arbitrarily the amount of your orator's gross receipts derived from business done between points in the State of Florida from such information as he may be able to obtain, and will add ten per cent to the amount of taxes that would be computed to be due under such estimate at the rate of $1.50 upon each One Hundred Dollars of such estimate, as a penalty, and will immediately thereafter issue his warrant, as is provided in and by Section 18 of Chapter 5596, to the Sheriff of a County in Florida in which your orator's car or cars may be located, commanding him to collect by a levy upon and sale of your orator's car or cars, the tax so fixed by the said A. C. Croom, as Comptroller, on said estimated gross receipts of your orator, as hereinbefore set forth, together with ten per cent thereof added as a penalty, and under and by virtue thereof the Sheriff or Sheriffs to whom said warrant or warrants so issued by the said A. C. Croom, as Comptroller, may come or be sent, will at once levy upon your orator's cars and advertise same for sale for the payment of such tax and penalty as hereinbefore set forth, and pending a sale under such advertisement made pursuant to said warrant, will take your orator's cars into physical custody and possession and wholly deprive your orator of the use thereof, and by virtue of said proceeding and a sale of your orator's cars thereunder, its said cars will be wholly lost to it with serious consequences and results to your orator and the public, and to the irreparable damage of your orator, as from the character and nature of the case the damage suffered by your orator would be impossible to estimate.

30. And your orator further represents that it has at all
19 times, at Jacksonville, Duval County, Florida, a number of its parlor, dining and sleeping cars, easily accessible for a levy and seizure under any warrant that might be issued by the said A. C. Croom, as Comptroller, as hereinbefore set forth, and that the most of said cars are engaged in interstate business, and that by reason of your orator being compelled in the orderly transaction of its business to have a number of its cars of different types which run into and out of said City of Jacksonville, at the City of Jacksonville, it is rendered easy and possible for any Sheriff to whom the said A. C. Croom, as Comptroller, may issue his warrant for the collection of said tax and penalty as hereinbefore stated, to seize and tie up its cars and paralyze your orator's business, without any opportunity upon the part of your orator to be heard as to the legality of the tax at law, and without the right at law to relieve the situation by a bond, and your orator verily believes and so charges, that any Sheriff to whom the said A. C. Croom, as Comptroller, might send his warrant for the collection of said tax and penalty, would, in order to put a pressure upon your orator and compel spot payment of the demands of the said A. C. Croom, as Comptroller, levy upon and seize such a large of your orator's cars as to coerce and compel the payment of said Comptroller's demands under said warrant or allow its business to be destroyed and the traveling public inconvenienced and damaged.

31. And your orator avers and charges that all of the procedure that might or could be had under and by virtue of Sections 47 and 48 of Chapter 5596 of the laws of Florida, as hereinbefore outlined and set forth, or any other proceedings to enforce by any means the payment of any tax claimed to be due under said Section 47 of Chapter 5596, would be in violation of your orator's rights under the laws and Constitution of the United States, and be a proceeding and proceedings without due process of law and without your orator having even had a day in Court, and without your orator having even a chance to have a day in Court or to be heard in a Court of law.

20 32. Your orator further states that the said A. C. Croom, Comptroller of the State of Florida, as your orator is informed and believes, is not pecuniarily able to respond to such damages as would inure to your orator even if such damages were capable of ascertainment and which your orator avers would be of a character not measurable in a Court of Law, and that the bond of the said Comptroller does not cover damages of such character.

33. Your orator further says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum of Two Thousand Dollars, and that this suit arises under the Constitution and laws of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a Court of Equity where matters of this kind are properly recognizable and relievable, your orator therefore

prays the aid of this Honorable Court, and prays that a writ of injunction be issued out of and under the seal of this Honorable Court, commanding, enjoining and restraining the defendant, A. C. Croom, as Comptroller of the State of Florida, and all persons claiming to act under his direction or control, absolutely to desist and refrain from making any estimate of the amount of the gross receipts of your orator derived from business done between points in the State of Florida, either from such information as he may be able to obtain, or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent as a penalty, as is provided in and by Section 47 of Chapter 5596 of the Laws of Florida of 1907, and from issuing and delivering or sending any warrant directed to any Sheriff of the State of Florida commanding him to collect by levy and sale any tax that may be claimed to be due the State of Florida under and by virtue of Section 47 of Chapter 5596 of the Laws of Florida of 1907, and from making
or having made by any officer a levy upon any of your
21 orator's cars or other property under any warrant issued
under and by virtue of said Section 47 of Chapter 5596, and from seizing or taking into custody any of your orator's cars or other property thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatever which he, the said A. C. Croom, as Comptroller of the State of Florida, or any person acting under his direction or control, may claim to be due as tax or penalty upon any amount or estimated amount of gross receipts under said Section 47 of Chapter 5596, until such time as your Honor shall appoint and direct and order herein, and that upon such hearing herein the writ herein prayed for be made and confirmed until the final determination of this suit, and that thereupon the said injunction may be made perpetual, and that Section 47 of Chapter 5596 of the Laws of Florida, approved June 18, 1907, hereinbefore referred to, may be declared null and void and of no effect by the decree of this Honorable Court, in this cause, and that your orator may have such other and further relief in the premises as the nature and circumstances of this case may require and to your Honor shall seem meet and proper; and that, in the meantime, until a decision can be had upon your orator's motion for the injunction herein prayed for, a restraining order be granted restraining the acts sought herein to be enjoined; your orator hereby averring that there is danger of irreparable injury, from delay, if action should not be taken until said motion for an injunction can be tried;

May it please this Honorable Court to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said defendant A. C. Croom, as Comptroller of the State of Florida, therein and thereby commanding him on a day certain therein to be made and under a certain penalty to be therein named, to be and appear before this Honorable Court, then and there to answer, but not under oath (such oath being expressly waived), all and singular

the premises, and to stand to, perform and abide by such
22 order, direction and decree as may be made against him as Comptroller of the State of Florida, in the premises, or shall seem meet and agreeable to equity and good conscience, and your orator, as in duty bound, will ever pray, etc.

THE PULLMAN COMPANY,
By JNO. C. BURROWES,
Its Dist. Superintendent.

JOHN E. AND JULIAN HARTRIDGE,
Solicitors and of Counsel for Complainant.

STATE OF FLORIDA,
County of Duval:

Personally appeared before me, a Notary Public duly commissioned and qualified to act in and for the State and County aforesaid, John C. Burrowes, who, being duly sworn, deposes and says that he is District Superintendent of The Pullman Company, the complainant in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof, and that the facts therein stated as of *of* complainant's own knowledge are true, and that the facts therein stated upon complainant's information and belief he believes to be true.

Sworn to and subscribed before me this 31 day of December, 1910.

[SEAL.] E. M. RORABECK,
Notary Public, State of Florida at Large.

My Commission Expires Dec. 19, 1911.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Bill of Complaint. John E. Hartridge, Solicitor for Complainant. Filed Jan. 3, 1911. F. W. Marsh, Clerk.

Whereupon, to-wit: the 3rd day of January, A. D. 1911, there issued out of the office of the Clerk of said Court a subpœna to the said Defendant, which was delivered to the Marshal of the said District for service, and was by him executed and
23 returned into the said Clerk's office, with his return endorsed thereon, and with the said return, is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to A. C. Croom, as Comptroller of the State of Florida and a Citizen of said State:

We Command You, and every of you, that you appear before the Judges of the Circuit Court of the United States of America, for the Fifth Circuit and Northern District of Florida, at Pensacola, in

said District, on the First Monday, being the sixth day of February, A. D., 1911, to answer to a bill of complaint exhibited against you by The Pullman Company, a corporation chartered and existing under and by virtue of the laws of the State of Illinois, and filed in the Clerk's office of said Court, and then and there to receive and abide by such judgment and decree as said Court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the Marshal of the United States, to execute and return.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States and the Seal of this Court, at the City of Pensacola, in the said District, this 3rd day of January, A. D. 1911.

F. W. MARSH, *Clerk.*

JOHN E. AND JULIAN HARTRIDGE,
Solicitors for Compl't.

MEMORANDUM.—The above named Defendant, is notified that unless he shall enter his appearance in the Clerk's office of said Court, at Pensacola, Florida, aforesaid, on or before the day to which the above is returnable, the complaint will be taken against him as confessed and a decree entered accordingly.

[SEAL.] F. W. MARSH, *Clerk.*

Endorsed: Civ. 881. No. —. Circuit Court, United States, Northern District of Florida. The Pullman Co., a corporation, vs. A. C. Croom, Comptroller of the State of Florida. Chancery Subpœna. Returnable to Rule Day, First Monday in February, A. D. 1911. F. W. Marsh, Clerk. J. E. & Julian Hartridge, Complainant's Solicitors. Filed Jan. 14, 1911. F. W. Marsh, Clerk.

24 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Chancery Subpœna & Injunction on the therein named A. C. Croom, comptroller, by handing to and leaving a true and correct copy thereof with him at Tallahassee, in said District on the 4th day of January, A. D. 1911.

T. F. McGOURIN,
U. S. Marshal,
By W. L. STRICKLAND,
Deputy (W).

Filed Jan. 14, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the said 3rd day of January, A. D. 1911, there was filed in the office of the Clerk of said Court, (the Judge of said Court having made and caused to be entered of

record,) a certain Restraining Order, which is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida in the Fifth Judicial Circuit, Sitting in Equity at ——, Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

Whereas, in the above entitled cause it has been made to appear upon the bill of complaint filed herein and duly sworn to, that a writ of injunction preliminary to the final hearing is prayed for, and that the complainant is prima facie entitled thereto;

Now, therefore, it is ordered that the motion and prayer in said bill for a writ of injunction preliminary to the final hearing be set for hearing at Chambers before Wm. B. Sheppard, United States Judge of the Fifth Circuit, at The Court House, in the City of Tallahassee, and State of Florida, on the 16th day of January, 1911, at 11 o'clock A. M., and until the hearing of said motion it is ordered that you, the defendant herein, and all persons acting by or under your authority or direction, be and you and they are hereby specially restrained and enjoined until the hearing of said motion and until otherwise ordered by the Court, as follows:

From making any estimate of the amount of the gross receipts of The Pullman Company derived from business done between points in the State of Florida either from such information as you, the defendant, may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent as a penalty, and from issuing and delivering, or sending any warrant directed to any Sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 47 of Chapter 5596, and from seizing or taking into custody any of the cars or other property of The Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that you, the said A. C. Croom, may claim to be due as a tax or penalty upon any amount or estimated amount of gross receipts under Section 47, Chapter 5596.

The Complainant's application for a restraining order is hereby granted, as aforesaid, but the same shall be dissolved unless the complainant shall within fifteen days from this date give bond, with good and sufficient security, to be approved by the Clerk of this Court, in the penal sum of two thousand Dollars, securing the said defendant against all loss or damage that may result from the issuance of said restraining order, if it should be finally determined that the same is improperly issued, or that may be awarded to the defendant for the granting of said restraining order.

26 It is further ordered that a copy of this order, certified under the hand of the Clerk and the seal of this Court, be served by the complainant upon the defendant restrained hereby.

Done at Pensacola, Florida, this 3rd day of January, 1911.

WM. B. SHEPPARD,
Judge of the Circuit Court for the Northern District of Florida, Fifth Judicial Circuit.

Endorsed: U. S. Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Restraining Order. John E. Hartridge, Solicitor for Complainant. Filed Jan. 3, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the 19th day of January, A. D. 1911, came the Solicitor for the Complainant, and filed in the office of the Clerk of said Court a Notice of the hearing of said cause, which is in the words and figures following, to-wit:

In the United States Circuit Court for the Northern District of Florida in the Fifth Judicial Circuit, Sitting in Equity.

THE PULLMAN COMPANY, a Corporation,
v.
A. C. CROOM, as Comptroller of the State of Florida.

To the Honorable Albert W. Gilchrist, Governor of the State of Florida; Honorable Park Trammell, Attorney General of the State of Florida; Honorable A. C. Croom, Comptroller of the State of Florida:

You and each of you will please take notice that I will, on Wednesday the 25th day of January, A. D. 1911, at eleven o'clock a. m., at New Orleans, in the State of Louisiana, or at such place and at such date thereafter as may be fixed pursuant to the United States Statute in such case made and provided, move before the Honorable Don. A. Pardee, Circuit Judge in and for the Fifth Judicial Circuit of the United States, for a temporary injunction to restrain and enjoin Honorable A. C. Croom, as
27 Comptroller, the defendant herein, and all persons acting by or under his authority or direction, from making any estimate of the amount of the gross receipts of The Pullman Company derived from business done between points in the State of Florida, either from such information as the said A. C. Croom, the defendant, may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent, as a penalty, and from issuing and delivering, or sending any warrant directed to any sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 47 of Chapter 5596, and from seizing or taking into custody any of the cars, or other property, of The Pullman Company thereunder, and

from taking any action or proceeding to collect or to enforce payment of any sum whatsoever, that the said A. C. Croom, as Comptroller, may claim to be due as a tax or penalty upon any amount or estimated amount of gross receipts under Section 47, Chapter 5596, on the ground that said law is unconstitutional and void for the reasons stated in the bill of complaint now on file in the Circuit Court of the United States for the Northern District of Florida.

JOHN E. HARTRIDGE,
Attorney for The Pullman Company.

Service of a true copy of the foregoing notice received and accepted, this the 18th day of January, A. D. 1911.

ALBERT W. GILCHRIST,
Governor of the State of Florida,
By G. T. WHITFIELD,
Secretary of the Governor.
PARK TRAMMELL,
Attorney General of the State of Florida.
A. C. CROOM,
Comptroller of the State of Florida,
By W. M. McINTOSH, JR.,
Chief Clerk.

Endorsed: U. S. Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Notice of Hearing. Filed Jan. 19, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the said 19th day of January,
28 A. D. 1911, the Judge of said Court made and caused to be entered of record a continuation of the Restraining Order heretofore granted in the cause, which is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, In the Fifth Judicial Circuit, Sitting in Equity at Tallahassee, Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

Whereas, in this case as above a restraining order restraining and enjoining A. C. Croom, Comptroller, defendant, as will more fully appear by said restraining order on file in this Court, was made at Pensacola, Florida, on the 3d day of January, A. D. 1911, and whereas it has been made to appear to the Court that notice has been given to Hon. A. W. Gilchrist, Governor of the State of Florida, Hon. Park Trammell, Attorney General of the State of Florida, and Hon. A. C. Croom, Comptroller of the State of Florida, that an application will be made before the Honorable Don A. Pardee, Cir-

cuit Judge of the United States in and for the Fifth Judicial Circuit of the United States, at New Orleans, Louisiana, on Wednesday, the 25th day of January, A. D. 1911, pursuance to and in compliance with Section 17 of Chapter 309 of the Acts of Congress, approved June 18, 1910.

It is Ordered, Adjudged and Directed, that the restraining Order made in this case, above referred to, on the 3d day of January, A. D. 1911 be and the same is continued in force until the hearing and determination of the application for a temporary injunction upon the notice as heretofore herein referred to.

Done and Ordered at Tallahassee, Florida, this the 18th day of January, A. D. 1911.

WM. B. SHEPPARD,
Judge of the Circuit Court, Northern District of Florida, Fifth Judicial Circuit.

Endorsed: U. S. Circuit Court, Northern District of
29 Florida. The Pullman Company v. A. C. Croom, as Comptroller. Order of Court. Filed Jan. 19, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 26th day of January, A. D. 1911, the Honorable Don A. Pardee, Circuit Judge for the Fifth Judicial Circuit, made and caused to be entered of record an Order directed to the said Defendant, A. C. Croom, to show cause on application for Injunction, which said Order is in the words and figures following, to-wit:

United States Circuit Court, Fifth Circuit.

THE PULLMAN COMPANY
v.
A. C. CROOME, as Comptroller of the State of Florida.

Application for an injunction pendente lite having been referred to me, it is now, on motion of John E. Hartridge, Esq., solicitor for the plaintiff, ordered that the defendant, A. C. Croome, Comptroller of the State of Florida, do show cause before me in chambers in the City of New Orleans, on February 9th, 1911, at eleven o'clock A. M., or as soon thereafter as counsel can be heard, why the injunction pendente lite should not be granted as prayed for.

This 25th day of January, A. D. 1911.

DON A. PARDEE,
Circuit Judge.

Endorsed: The Pullman Co., vs. A. C. Croom, etc. Order to Show Cause on application for Injunction. Filed January 26, A. D. 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 2nd day of February, A. D. 1911, was filed in the office of the Clerk of said Court the return of the

Marshal to the Order of the Honorable Don. A. Pardee to Show Cause, which is in the words and figures following, to-wit:

30 United States Circuit —, Fifth Circuit.

THE PULLMAN COMPANY
vs.
A. C. CROOME, as Comptroller of the State of Florida.

Application for an Injunction pendente lite having been referred to me, it is now, on motion of John E. Hartridge, Esq., solicitor for the plaintiff, ordered that the defendant, A. C. Croome, Comptroller of the State of Florida, do show cause before me in chambers in the City of New Orleans, on February 9th, 1911, at eleven o'clock A. M., or as soon thereafter as counsel can be heard, why the injunction pendente lite should not be granted as prayed for.

This 25th day of January, A. D. 1911.

DON A. PARDEE.
Circuit Judge.

Endorsed: The Pullman Company vs. A. C. Croom, etc. Order to show cause on application for Injunction. Filed January 26th. F. W. Marsh, Clerk.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the Circuit Court of the United States for the Northern District of Florida, do hereby certify that the above is a true, perfect and correct copy of the said Order as therein set out.

In witness whereof, I have hereunto set my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 26th day of January, A. D. 1911.

[SEAL.] F. W. MARSH, *Clerk.*

Endorsed: Civ. 881. The Pullman Co., vs. A. C. Croom, etc. Return of service of Order to Show Cause. Filed February 2, 1911 F. W. Marsh, Clerk.

31 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Order to Show cause on the therein-named A. C. Croom, comptroller of the State of Fla., by handing to and leaving a true and correct copy

thereof with the aforesaid A. C. Croom, personally at Tallahassee, in said District on the 31st day of Jany., A. D. 1911.

T. F. McGOURIN,
U. S. Marshal.
By W. L. STRICKLAND,
Deputy.

W.

Filed February 2, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the 6th day of February, A. D. 1911, was filed in the office of the Clerk of said Court the Appearance of the said defendant, which is in the words and figures following, to-wit:

In the United States Circuit Court for the Northern District of Florida.

In Chancery.

THE PULLMAN COMPANY, a Corporation, Complainant,
vs.
A. C. CROOM, Comptroller of the State of Florida, Defendant.

Defendant's Appearance.

Comes now A. C. Croom, Comptroller of the State of Florida, defendant by his solicitor, Park Trammell and enters his appearance in the above styled suit on this February 6th, 1911, being the Rule Day in said Month.

PARK TRAMMELL.
Solicitor for Defendant.

Endorsed: In the United States Circuit Court for the
32 Northern District of Florida. The Pullman Company, a corporation, Complainant, vs. A. C. Croom, Comptroller, of the State of Florida, Defendant. Defendant's Appearance. Filed February 6, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the 13th day of February, A. D. 1911, was filed in the office of the Clerk of said Court an Affidavit of the said A. C. Croom, which is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida.

In Chancery.

THE PULLMAN COMPANY, a Corporation, Complainant,
vs.
A. C. CROOM, Comptroller of the State of Florida, Defendant.

Affidavit.

STATE OF FLORIDA,
County of Leon:

Upon being duly sworn, A. C. Croom, says that as Comptroller of the State of Florida, he received from the Pullman Company, the Complainant in the above styled suit, the tax return of its cars within the State of Florida for the year 1910; that upon said return the said company reported that it had within Florida one extra sleeping car which was not assigned by said list to any particular route; that for taxation purposes the said company reported on said return of 1910 part of its cars at a valuation of $3,000 and some at $5,000 each. That affiant is more or less familiar with the value and the class of Pullman cars used by the said company in the State of Florida, that the said cars, in his opinion, are worth from $12,000 to $25,000 each. That the tax of $1.50 per $100.00 on the gross receipts of the said Pullman Company within Florida, for the year 1908, was $1405.26. That affiant believed that the said tax
33 for the years 1909 and 1910 would not for both years exceed $7,000.00. That affiant believes that the said company constantly keeps at Jacksonville, Florida one extra car and that a levy upon this one car would be sufficient upon which to realize the amount of the $1.50 tax upon each $100.00 gross receipts of said Pullman Company within the State of Florida for the years 1909 and 1910. That should affiant issue his warrant for the collection of said tax on gross receipts it would not be his purpose to disturb, interfere with and damage the business of the said Pullman Company within the State of Florida or elsewhere.

A. C. CROOM.

Sworn to and subscribed before me this 7th day of February A. D. 1911.

[SEAL.] W. M. McINTOSH, JR.,
Notary Public, State of Florida.

My Commission expires April 28, 1912.

Endorsed: In the Circuit Court of the United States, for the Northern District of Florida. In Chancery. The Pullman Company, Complainant, vs. A. C. Croom, Comptroller of the State of Florida. Affidavit of A. C. Croom. Filed Feby. 9th, 1911. Don A. Pardee. Filed Feb. 13, 1911. F. W. Marsh, Clerk.

And upon the said 13th day of February, A. D. 1911, was filed in the office of the clerk of said Court the Affidavit of J. C. Burrows, which is in the words and figures following, to-wit:

United States of America, Northern District of Florida, in the Fifth Judicial Circuit of the United States.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

STATE OF FLORIDA,
County of Duval:

Before me, a Notary Public in and for said State and
34 County, personally came John C. Burrowes, to me well known, who, being by me first duly sworn, deposes and says that he is District Superintendent of the Pullman Company at Jacksonville, Florida; that since the filing of the bill of complaint in this case, and additional to the amounts named in said bill of complaint, to-wit: on January 6, 1911, for State and County licenses on non-buffet and dining cars for The Pullman Company, for the fiscal year ending October first, 1911, he has paid the sum of $2031.25.

JNO. C. BURROWES.

Sworn to and subscribed before me this 6 day of February, A. D. 1911.

[SEAL.] E. M. RORABECK,
Notary Public, State of Florida at Large.

My Commission Expires Dec. 19, 1911.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Affidavit of J. C. Burrowes. John E. Hartridge, Solicitor for Complainant. Filed Feby. 9th, 1911. Filed Feb. 13, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: on the said 13th day of February, A. D. 1911, was filed in the office of the Clerk of said Court a Motion for an Injunction against the said Comptroller, which is in the words and figures following, to-wit:

In the United States Circuit Court for the Northern District of Florida, in the Fifth Judicial Circuit, Sitting in Equity.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

Now comes the Complainant in the above entitled suit, The Pullman Company, of John E. Hartridge, Complainant's Solicitor and

Counsel, pursuant to notice given to the Honorable Albert W.
35 Gilchrist, Governor of the State of Florida, Honorable Park Trammell, Attorney General of the State of Florida, and Honorable A. C. Croom, Comptroller of the State of Florida, on the eighteenth day of January, 1911, and moves this Honorable Court to grant a writ of injunction against the said A. C. Croom, as Comptroller, and all persons acting by or under his authority or direction, from making any estimate of the amount of the gross receipts of The Pullman Company derived from business done between points in the State of Florida, either from such information as the said A. C. Croom, the defendant, may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent. as a penalty, and from issuing and delivering, or sending any warrant directed to any Sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 47 of Chapter 5596 of the Laws of the State of Florida, and from seizing or taking into custody any of the cars, or other property, of The Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that the said A. C. Croom, as Comptroller, may claim to be due as a tax or penalty upon any amount or estimated amount of gross receipts under Section 47, Chapter 5596 of the Laws of the State of Florida, on the ground that said law is unconstitutional and void for the reasons stated in the bill of complaint now on file in the Circuit Court of the United States for the Northern District of Florida, pending this suit and until a further order of the Court, conformable to the prayer of the bill in such case filed.

JOHN E. HARTRIDGE,
Solicitor and of Counsel for Complainant.

January 25, 1911.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company, a Corporation vs. A. C. Croom, as Comptroller. Motion for Injunction. John E. Hartridge, Solicitor for Complainant. Filed Feb. 13, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 13th day of February, A. D. 1911, the Judges of the Fifth Circuit of the United States, made and caused to be entered of record, an Order denying the Injunction prayed for, which Order is in the words and figures following, to-wit:

36 United States Circuit Court, Northern District of Florida.

In Equity.

THE PULLMAN COMPANY
v.
A. C. CROOM, Comptroller.

This cause came on to be heard upon an application for an injunction pendente lite before Don A. Pardee, A. P. McCormick and D. D. Shelby, Circuit Judges, sitting in chambers in the City of New Orleans, and was argued upon bill and affidavits, by John E. Hartridge, Esq., for the complainant, and the Hon. Park Trammell, Attorney-general of the State of Florida, for defendant.—

Whereupon, and on due consideration, the said Judges being of opinion that section 47, chapter 5596 of the Laws of Florida, approved June 18, 1907, taken in connection with chapter 5597 of the laws of Florida, approved the same day, provides for a graded license tax on all sleeping and parlor car companies operating their cars in the State of Florida, and is within legislative power of the State; and, further, that the said complainant can have no standing in equity to resist the tax levied under said law until it shall have made the return provided for therein and paid the taxes thereon, the said application is denied.

New Orleans, La., February 11th, 1911.

DON A. PARDEE,
Circuit Judge.
A. P. McCORMICK,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.

Endorsed: The Pullman Co. vs. A. C. Croom, etc. Order Denying Temporary Injunction. Filed Feb. 13, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 28th day of February, A. D. 1911, was filed in the office of the Clerk of said Court the Petition of the said Pullman Company for an appeal to the Supreme Court of the United States of the said cause, which is in the words and figures following, to-wit:—

37 In the United States Circuit Court, Northern District of Florida.

In Chancery.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

Bill for Injunction.

The Pullman Company, a corporation organized and existing under the laws of the State of Illinois, plaintiff in the above entitled cause, feeling itself aggrieved by the order or decree of this Court entered on the 11 day of February, A. D. 1911, in the above entitled cause, by Circuit Court Judges Don A. Pardee, A. P. McCormick and David D. Shelby, denying, after notice and hearing as provided by Section 17 of Chapter 309 of the Laws of Congress of 1910, the interlocutory injunction, does hereby pray an appeal from said order or decree, to the Supreme Court of the United States, as is in and by said statute provided, and prays that this appeal may operate as a supersedeas to the order denying said interlocutory injunction, and that said appeal may be allowed, and that a true copy of the record and proceedings in this case, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN E. HARTRIDGE,
Attorney and Solicitor for Plaintiff.

38 Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Petition for Appeal. John E. Hartridge, Solicitor for Plaintiff. Filed Feb. 28, 1911. F. W. Marsh, Clerk.

And upon the said 28th day of February, A. D. 1911, was filed in the office of the Clerk of said Court the Assignment of Error in the said cause, which is in the words and figures following, to-wit:—

In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

Now comes the plaintiff, The Pullman Company, a corporation under the laws of the State of Illinois, by its Attorney, John E. Hartridge, and says that in the record of proceedings in the above entitled cause there is manifest error in this, to-wit:

1. The Court erred in deciding and denying an interlocutory injunction to the plaintiff, as prayed in the bill of complaint.

2. The Court erred in deciding and holding that the plaintiff had no standing in equity to resist the tax levied and against which relief

was sought, until the plaintiff should have made a return and paid the tax as required by the statute contended to be unconstitutional.

3. That the Court erred in and by the order made herein denying the interlocutory injunction, dated February 11, 1911.

JOHN E. HARTRIDGE,
Attorney and Solicitor for Plaintiff.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Assignment of Errors. John E. Hartridge, Solicitor for Plaintiff. Filed Feb. 28, 1911, F. W. Marsh, Clerk.

And afterwards, to-wit:—on the said 28th day of February, A. D. 1911, was filed in the office of the Clerk of said Court an Order of the said Circuit Judge allowing an Appeal in the said cause, which is in the words and figures following, to-wit—

39 In the United States Circuit Court, Northern District of Florida.

In Chancery.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

Now, on this 25th day of February, A. D. 1911, pursuant to the application for appeal it is ordered that the above appeal be allowed returnable in the Supreme Court of the United States within thirty days from this date upon the plaintiff, The Pullman Company, a Corporation organized under the laws of the State of Illinois, giving bond with surety in the sum of Two Hundred and Fifty Dollars, for the payment of damages and costs, conditioned as required by law, payable to the defendant, A. C. Croom, as Comptroller of the State of Florida.

Done and ordered at New Orleans, Louisiana, this 25th day of February, A. D. 1911.

DON A. PARDEE,
Circuit Judge, United States Circuit Court in and for the Fifth Judicial Circuit.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. John E. Hartridge, Solicitor for Plaintiff. Order Allowing Appeal. Filed Feb. 28, 1911, F. W. Marsh, Clerk.

And upon the said 28th day of February, A. D. 1911, was filed in the office of the Clerk of said Court the Appeal Bond in the said cause, which is in the words and figures following, to-wit:—

40 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY (a Corporation)
vs.
A. C. CROOM, as Comptroller for the State of Florida.

Know all men by these presents, That we, The Pullman Company, a corporation created, existing and being under the laws of the State of Illinois, as Principal, and John E. Hartridge and George A. Claussen, as Sureties, are held and bound unto A. C. Croom, as Comptroller of the State of Florida, in the full and just sum of Two Hundred and Fifty ($250.00) and No 100 Dollars, to be paid to the said A. C. Croom, as Comptroller, or his successors, in office, to which payment, well and truly to be made, the Pullman Company binds itself, its successors and assigns and the sureties bind severally themselves, their heirs, executors and administrators.

Sealed this 25 day of February, 1911.

Whereas, lately, Circuit Judges Don. A. Pardee, A. P. McCormick and David D. Shelby did deny the application for a temporary injunction applied for upon the part of the Pullman Company, and the said Pullman Company has entered and obtained an order allowing an appeal to reverse the order and decree denying a tem-

41 porary writ of injunction, so made by said Circuit Judges, to reverse the order and decree made therein, and a citation directed to the said A. C. Croom, as Comptroller, directing and admonishing him to be and appear at a session of the Supreme Court of the United States on the — day of ——, A. D. 1911, next.

Now the condition of the above obligation is such that if the said, The Pullman Company, shall prosecute said appeal to effect and answer all damages and costs, if he fail to make good said appeal, then the above obligation to be void, else to remain in full force and virtue.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE, *Its Att'y.*
JOHN E. HARTRIDGE.
G. A. CLAUSSEN.

Approved by:

DON A. PARDEE,
United States Circuit Judge.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Appeal Bond. John E. Hartridge, Solicitor for Plaintiff. Filed Feb. 28, 1911, F. W. Marsh, Clerk.

42 United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY
vs.
A. C. CROOM, as Comptroller.

To A. C. Croom, as Comptroller, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden in the City of Washington, District of Columbia, in the United States, wherein The Pullman Company is Appellant, and you, A. C. Croom, is defendant; to show cause, if any there be, why the order and decree of Judges Don A. Pardee, A. P. McCormick and David D. Shelby, as within the appeal mentioned, should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 25th day of February, in the year of our Lord, 1911.

DON A. PARDEE,
United States Circuit Judge.

43 Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Citation on the therein-named A. C. Croom as comptroller by handing to and leaving a true and correct copy thereof with him personally at Tallahassee in said District on the 4th day of March, A. D. 1911.

T. F. McGOURIN, *U. S. Marshal,*
By W. L. STRICKLAND, *Deputy.*
M.

44 UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the Circuit Court of the United States within and for the Northern District of Florida, and the Fifth Judicial Circuit, do hereby certify, that the foregoing pages, numbered from one to forty-four, both inclusive, constitute a true, correct, and perfect copy of the transcript and proceedings, in the case of the Pullman Company, a corporation, vs. A. C. Croom, as Comptroller of the State of Florida, including the Decree of the Honorable Judges of the Circuit Court for the Fifth Judicial Circuit of the United States, and the Order of the Honorable Don. A. Pardee, Circuit Judge, allowing an Appeal, returnable to the Supreme Court

of the United States, as the same are on file and of record in said Court.

In witness whereof, I have hereunto set my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 6th day of March, A. D. 1911.

[Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH, *Clerk.*

45 [Endorsed:] Civ. 881. United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller. Citation. John E. Hartridge, Solicitor for Plaintiff.

Endorsed on cover: File No. 22,577. N. Florida C. C. U. S. Term No. 545. The Pullman Company, appellant, vs. A. C. Croom, Comptroller of the State of Florida. Filed March 20th, 1911. File No. 22,577.

6

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]-1913

No. [redacted] 158

THE PULLMAN COMPANY, APPELLANT,

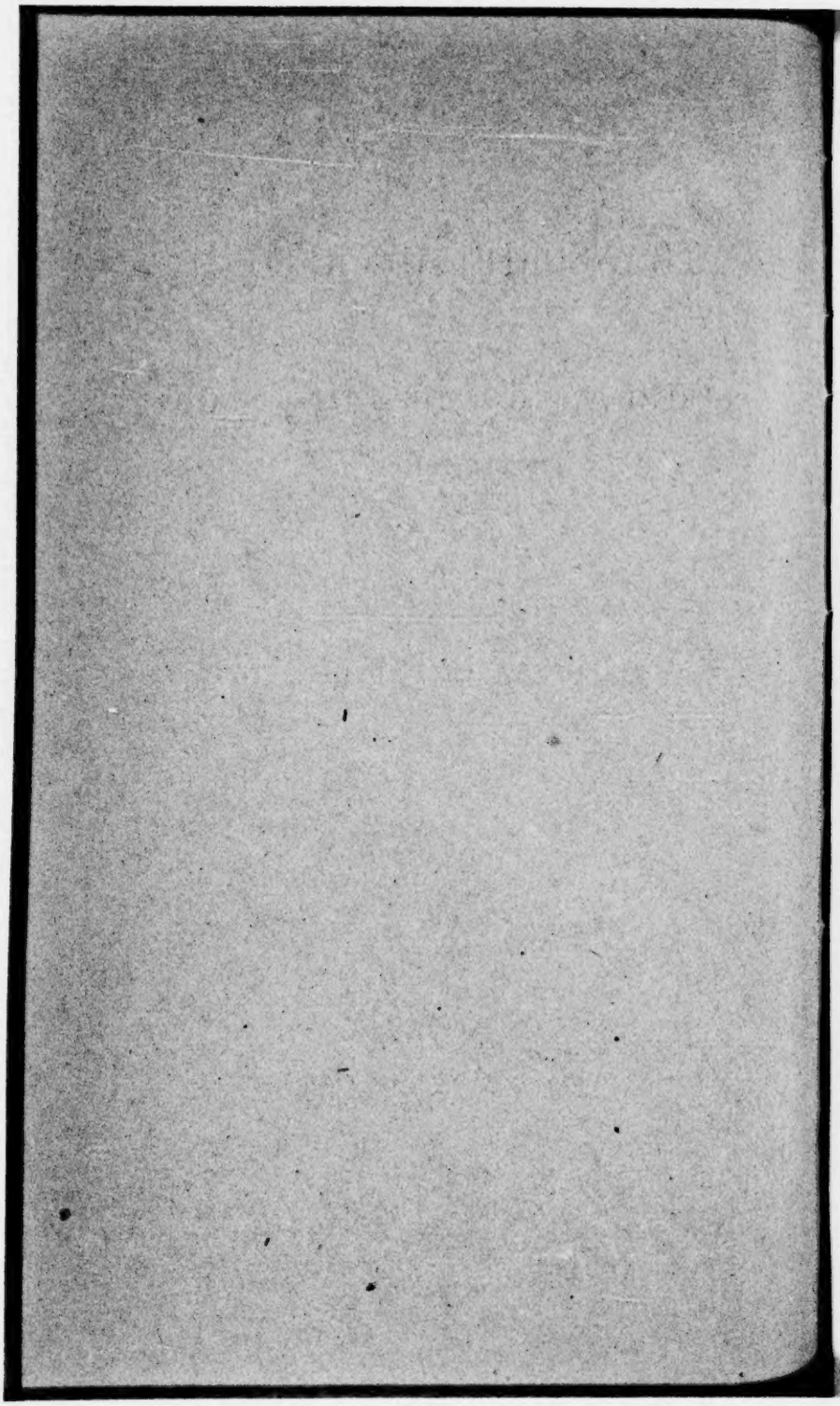
vs.

A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND W. V. KNOTT, AS TREASURER OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED JANUARY 8, 1912.

(22,997)



(22,997)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 921.

THE PULLMAN COMPANY, APPELLANT,

vs.

A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND W. V. KNOTT, AS TREASURER OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 12, 1912.

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a United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY
vs.
A. C. CROOM, as Comptroller, and W. V. KNOTT, as Treasurer.

Be it remembered, that upon the 18th day of December, A. D. 1911, came the Honorable John E. Hartridge, Solicitor for Complainant, and filed in the office of the Clerk of said Court a certain Bill of Complaint against the said defendants; the said Bill was duly filed, and is in words and figures following:

1 In the United States Circuit Court, Northern District of Florida.

To the Honorable the Judges of the United States Circuit Court in and for the Northern District of Florida:

Your orator, The Pullman Company, is a corporation chartered and existing under and by virtue of the laws of the State of Illinois and having its chief place of business in the City of Chicago, County of Cook and State of Illinois, and brings this, its bill of complaint, against A. C. Croom, as Comptroller of the State of Florida and a citizen of said State, and W. V. Knott, Treasurer of the State of Florida and a citizen of said State, and thereupon your orator complains and says:

1. That your orator has complied with all of the statutes of the State of Florida requisite to its engaging in business in said State, and was on the first day of June, 1907, and for more than ten years prior thereto had been, and ever since has been and now is, engaged in the business of furnishing parlor cars, dining cars, and sleeping cars to railroad companies for their use upon railroads, under written contracts for terms of years in the several States of the United States of America, and has been engaged in furnishing parlor cars, sleeping cars, and dining cars, under written contracts for terms of years, to railroad companies operating between points wholly within the State of Florida and between points in the State of Florida and points in other States of the United States; and in the business of furnishing to the passengers of railroad companies travelling in cars of your orator, sleeping and other accommodations and food and refreshment.

2 2. That the said A. C. Croom is the duly qualified Comptroller of the State of Florida, residing in Tallahassee, the Capital of said State, and, among his duties, is charged with the collection of all sums due the State of Florida for taxes from Railroad, Telegraph and Sleeping Car Companies, and that W. V. Knott is the Treasurer of the State of Florida, charged with the duty of receiving and having the custody of all moneys collected for taxes due to the State of Florida.

3. Your orator further represents and avers that Chapter 5597 of the Laws of Florida, approved June 18, 1907, provides, among other things, for the payment to the State of Florida of license taxes enumerated therein, to-wit: Sleeping and parlor cars, $25.00 for each car; with buffet, $40.00 for each car; dining cars, $20.00 each; and provides that no person, firm or corporation shall engage in or manage the business, profession or occupation mentioned in said chapter, unless a State license shall have been procured in the manner therein defined; and among other things it is provided that the person, firm, or corporation so engaged in or managing the business, profession or occupation engaged in, shall pay such license taxes before a license therefor shall issue; and that in pursuance of the provisions of said law your orator paid State and County license taxes for the year provided for in said Chapter, and succeeding years, as follows, to-wit: For the year which expired on the first day of October, 1909, the amount of $3799.00 on 32 sleeping cars, 21 parlor cars with buffet, 21 sleeping cars with buffet, and 2 dining cars; for the year which expired on October first, 1910, the amount of $3634.75 on 46 parlor and sleeping cars without buffet, 30 parlor and sleeping cars with
3 buffet, and 3 dining cars; and for the year expiring October first, 1911, the amount of $2524.75 for 19 sleeping cars without buffet, 30 sleeping and parlor cars with buffet; and has paid all other license taxes falling due since then on their cars; all of which cars were used wholly in the State of Florida or between points in the State of Florida and points in other States, and in which were furnished accommodations to persons travelling therein from points in the State of Florida to other points in said State, as well as between points in the State of Florida and points in other States, and food and refreshments to persons travelling; and that said sums of money were paid by your orator for the privilege of engaging in business and using said cars within the State of Florida.

4. Your orator further represents and avers that Section 46 of Chapter 5596 of the Laws of the State of Florida for 1907, also provides for the assessment, levy and collection of an ad valorem tax upon the sleeping and parlor cars and other cars of Sleeping and Parlor Car Companies, and that your orator's cars were, in pursuance thereof, assessed and taxed for the year ending on the thirty-first day of December, 1909, and that your orator has paid $1320.80 to said State of Florida and $3101.50 in the aggregate to the various Counties of said State in and through which said cars ran during said year, amounting in all, for State and County taxes, to $4422.50 which your orator has paid as an ad valorem tax on such cars in the said State of Florida for said tax year 1909; and has paid to the State of Florida and to the several Counties thereof through which its cars have run all ad valorem taxes subsequently accruing and due to the
State and the several Counties, the sums so paid being in excess
4 each year of the amount paid the preceding year; and that said taxes so paid were levied upon the full assessed valuation of said property at the regular rates and percentages of taxes levied upon other property within the State and within the various Counties respectively in which said taxes were paid.

5. Your orator further represents that by Act approved June first, 1895, the Legislature of the State of Florida provided that all Sleeping and Parlor Car Companies should pay into the State Treasury the sum of $1.50 upon each one hundred dollars of gross receipts of said Companies derived from business done between points in the State of Florida; and by sundry amendments said law was re-enacted and incorporated in the Acts of the Legislature of the State of Florida, being Section 47 of Chapter 5596 of the Laws of Florida, approved June 18, 1907, and is as follows:

"All sleeping and parlor car companies operating their cars in this State shall, on or before the first day of January, 1908, and annually thereafter, report to the Comptroller of the State of Florida, under oath of the secretary or other officer of such company, the total amounts of their gross receipts derived from business done between points in this State; and at the same time shall pay into the State Treasury the sum of one dollar and fifty cents upon each one hundred dollars of gross receipts, and if any such company shall fail to make such report to the Comptroller and pay the tax thereon as herein provided, the Comptroller shall estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected"

6. Your orator further represents that the only sections of the Constitution of the State of Florida relating to taxation and the powers of the Legislature in regard thereto and to the subject of taxes, are as follows:

5 "Article IX.

"Taxation and Finance.

"SECTION 1. The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

"SECTION 5. The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation. But the cities and incorporated towns shall make their own assessments for municipal purposes upon the property within their limits. The Legislature may also provide for levying a special capitation tax, and a tax on licenses. But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes."

7. Your orator further represents that it is advised by Counsel that the Legislature of the State of Florida has only such powers in regard to enactments as are authorized by or find warrant in the Constitution of the State, and that said statute so provided for the

payment of one dollar and fifty cents upon each one hundred dollars of gross receipts of Sleeping and Parlor Car Companies derived from business done between points in the State, is not authorized by and does not find any warrant in any of the Sections of said Constitution hereinbefore quoted, or in any Article, Clause, Section or part of said Constitution, and that said statute seeking to impose said tax of one dollar and fifty cents upon every one hundred dollars of gross receipts, as before stated, is not a valid exercise of constitutional power on the part of the Legislature of the State of Florida, and said statute is invalid, void and of no effect, and would, if enforced, deprive your orator of its property without due process of law, in violation of the XIV Amendment of the Constitution of the United States, the protection of which your orator invokes.

6 8. Your orator further represents that said statute covering the payment of one dollar and fifty cents upon each one hundred dollars of the gross receipts of Sleeping and Parlor Car Companies, as hereinbefore mentioned, provides, among other things, that the Companies operating their cars in the State shall, on or before the first of January, report, under oath of the secretary or other officer of such Company, the total amounts of its gross receipts derived from business done between points in the State, and that upon failure to make such report and to pay the tax thereon the Comptroller shall estimate the amount of such gross receipts from such information as he may obtain, and shall add ten per cent thereto as a penalty for failure to make such report, and proceed to collect said tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected, and that the "delinquent" so mentioned refers to the method of collecting taxes upon Railroad Companies, and is as provided in Section 48, Chapter 5596, of the Laws of Florida, approved June 18, 1907, which is as follows:

"If any taxes on any railroad or any part thereof in this State shall not be paid on or before the first Monday in April of any year, the Tax Collector of any County wherein such taxes may be due shall send a certificate of the amount thereof to the Comptroller, including in said certificate the amount of State and County taxes, and special school district taxes and other special taxes. The Comptroller shall have the power upon the receipt of the certificate or certificates from the Tax Collectors as aforesaid, to issue a warrant directed to the Sheriff of any County where such defaulting railroad or any part thereof may be located, commanding him to collect by levy and sale, in the same manner as is now provided by law for the sale of property under execution from the Clerk of the Circuit Court of the shops, fixtures, rolling stock or any part thereof as may be located in this State, the full amount of taxes due thereon, or of the entire road or such part thereof, including the costs and expenses of sale, and the proceeds of such sale, after deducting the fees and costs as provided by law, shall be forwarded by such Sheriff to the Comptroller, who shall pay the State taxes into the State Treasury, and the County taxes and district school taxes and other special taxes to the

7 County Treasurer of each county in which such taxes were assessed, according to the assessment, and the surplus after such

payments are made, if any, shall be paid over to the authorities of such defaulting railroad.

"The fees of the Sheriff in the execution of the warrant provided for in this section shall be the same as provided by law in the case of executions from the Clerk of the Circuit Court, which fees, together with the costs, shall be included with the taxes in the amount to be collected from the defaulting railroad: Provided, further, That whenever any person or persons shall become the purchaser of any car, engine or other rolling stock of any such company or corporation at any such sale, such purchaser shall have the right to require of any such company or corporation the transportation of any car, engine or other rolling stock to any point along the line of such railroad at a cost of not to exceed eight cents per mile, and that the Sheriff shall take corporal possession of the property levied on under this section, and on selling the same, or any part thereof, shall deliver it into the actual possession of the purchaser upon his paying the amount bid therefor at such sale, and in case no person shall bid the amount of taxes due, including the costs and expenses of sale, the property shall be bid off for the Comptroller of the State, and shall be delivered to the Comptroller, and the Governor and Comptroller shall dispose of, sell and convey the same in such manner as in their judgment may be to the interest of the State. The provisions of this section, in so far as they relate to the sale of railroads for unpaid taxes, shall apply to all taxes assessed heretofore or that may be hereafter assessed."

9. That said Section 48 of Chapter 5596 of the Acts of the Legislature of the State of Florida of 1907, providing for the collection of taxes by the Comptroller, follows the section of the same Act which makes provision requiring the payment by Sleeping Car and Parlor Car Companies in the State of Florida of one dollar and fifty cents on each one hundred dollars of the gross receipts derived from business between points in said State, as hereinbefore set forth.

10. That under and by virtue of said Act of the Legislature and Section 48 thereof governing the collection of said tax of one dollar and fifty cents on each one hundred dollars of the gross receipts as before mentioned, a suit is not essential to the collection of the tax and the penalty provided for upon default in reporting the
8 total amount of gross receipts and the payment of the tax thereon, as provided in and by Section 47 of Chapter 5596 of the Acts of the Legislature of the State of Florida of 1907, and no action lies to recover back this tax if paid, or the tax and penalty if paid, after the same have been collected by levy and sale under the Comptroller's warrant, as provided in Section 48, or have been voluntarily paid.

11. Your orator is advised that the Supreme Court of the State of Florida has heretofore decided that taxes paid cannot be recovered from the Collector to whom paid, under the Laws of the State of Florida, even though the Collector has not paid the money over to the State; and has further held that no action may be had against a State officer or State officers in their official capacity to recover

money alleged to have been collected illegally for taxes, as such suit is, in effect, a suit against the State

12. That there is no provision of law of the State for a hearing of any kind or character either before the issuance of a warrant by the Comptroller to collect said tax provided for in said Section 47 of Chapter 5596, or after the issuance thereof, and no method provided by law for in any way contesting the legality of said tax, or of being heard in anywise in regard thereto, and no method, under any procedure known to the law of the State of Florida, at law, of contesting or questioning the legality of said tax or the statute under which it is sought to be collected, or to contest or question the legality of the Comptroller's warrant issued to collect said tax and penalty.

9 13. Your orator is advised that when a warrant for collection, or execution, issued in ordinary proceedings at law, an affidavit of illegality may be filed to said warrant or execution, and that then, under the orderly practice and procedure, the warrant or execution, as the case may be, and affidavit of illegality so filed, would be returned to the Court issuing the warrant or execution, and the issue made by the affidavit of illegality tried before the Judge presiding over the Court whence such warrant or execution issued, with the right to have the decision of said Judge reviewed by the highest appellate court of the State; but that to the warrant issued by the Comptroller under Section 48 of Chapter 5596, for the collection of said tax provided for in Section 47 of the same Act, an affidavit of illegality is not authorized, nor any other method of contesting same provided for, and no affidavit of illegality may be filed thereto, and any attempt to file same would be futile, and if filed in fact with a Sheriff who, under Section 48, is directed to execute said warrant, there is no court provided to which it could be returned, and no court or tribunal provided for in which the issue sought to be raised may be heard.

14. That the only statute of the State of Florida authorizing the contest of taxes is Section 2006 of the General Statutes of the State of Florida of 1906, as carried forward from the Acts of the Legislature of the State of Florida of January 4, 1848, and now in force, and which is as follows:

"In all cases where assessments are made against any person, body politic or corporate, and payment of the same shall be refused upon allegation of the illegality of such assessment, such person, 10 body corporate or politic, may apply to the Judge of the Circuit Court by petition setting forth the alleged illegality, and present the same, together with the evidence to sustain it, and the Judge shall decide upon the same, and if found to be illegal shall declare the assessment not lawfully made."

15. That said Section 2006 has no application to the tax provided for by Section 47 of Chapter 5596, hereinbefore set forth, and is limited in its application, as adjudicated by the Supreme Court of the State of Florida, its highest Appellate Court, solely to illegal assessments existing at the time the petition is filed as provided in said Section 2006, and does not even apply to subsequent illegalities, or any illegality or procedure or method of collection of a tax ques-

tioned, and in no way affords any opportunity of contesting or questioning the validity of Section 47 of Chapter 5596 of the Acts of 1907, as hereinbefore set forth, or of questioning the legality or power of the Comptroller under said Sections 47 and 48 of Chapter 5596 of the Laws of Florida, and there being no method, either by statute or under the orderly method of procedure at law to test the validity of said Sections 47 and 48 of Chapter 5596 of the Acts of 1907, or of contesting or questioning the act or any of the acts of the Comptroller taken under and by virtue of said Chapter 5596 of the Laws of Florida in a seizure or sale of the property of your orator for a failure or refusal to report to the Comptroller, under oath of the secretary or other officer of the Company, the total amount of its gross receipts derived from business between points wholly within the State of Florida, or to pay said tax or said tax and penalty when a report has not been made as provided by said Section 47, and no
11 method of procedure to contest or question any section on the part of said defendant, as Comptroller of said State, in seizing and selling, or either seizing or selling, the property of your orator, or by any means enforcing the collection of the tax provided for by said Section 47, any such action on the part of said Comptroller would be the taking of your orator's property without due process of law, in violation of the XIV Amendment of the Constitution of the United States which your orator specially invokes in its behalf, and your orator is remediless except in a court of equity.

16. Your orator shows that there is no provision of law for, or method authorized for, a hearing before the issuance by the Comptroller, under Section 48 of Chapter 5596 of the Laws of Florida, of his Warrant commanding the Sheriff of the County, to whom it is sent, to levy upon and sell the property of your orator for the tax, or tax and penalty, claimed under and by virtue of said Section 47 of said Chapter 5596 of the Laws of 1907, and no provision of law or procedure at law provided or authorized by which the issuance of said warrant by the Comptroller could be prevented, or the right to issue same contested, or by which a sale under said warrant could be stayed or held up until the rights of your orator could be heard and determined by a court of competent jurisdiction, and that under and by virtue of said Sections 47 and 48 of said Chapter 5596, as hereinbefore set forth, the property of your orator may be taken without your orator having had its day in court or any opportunity offered, before or after any sale made under said warrant, of having a day in court to be heard as to any question of the legality or right of the acts and conduct of the Comptroller, his agents, servants or attorneys, in the seizure and sale of your orator's property.

12 17. That your orator is not a common carrier, and does not transport passengers or property at any place or at any time, and does not own or operate any railroad or any part of any railroad upon which its cars are used, but that it furnishes parlor cars, dining cars, sleeping cars, and cars with buffet, and in all of said cars convenient appendages for persons travelling; and that it furnishes such cars to the railroad companies over whose lines its cars are used for the use of such railroad companies in carrying their passengers; and

that in its sleeping cars and parlor cars it furnishes berths for sleeping and designated seats to and for persons travelling in such cars, and necessary and convenient toilet facilities; and in such cars which are equipped with buffet it furnishes food and refreshments; and in its dining cars furnishes meals, lunches, food and refreshments; and by all of said service materially contributes to the comfort, convenience and pleasure of persons travelling in its cars, for which service and accommodations furnished it charges and receives compensation.

18. That your orator's cars are used upon and over lines of railroad operated in the State of Florida, and it derives receipts from its cars of the several kinds hereinbefore mentioned, and has heretofore, and ever since the passage of the Act of the Legislature of the State of Florida approved June first, 1895, providing therefor, annually, without objection, made the report and paid to the State of Florida the sum of one dollar and fifty cents on each one hundred dollars of such receipts as provided by said Act of 1895 and the Acts and laws amendatory thereof and Acts which have re-enacted said provision.

13 That during all of said time prior to the enactment of the Laws of Florida for 1907, to-wit, Section 46 of Chapter 5596 thereof, there was no provision in the Laws of Florida for the taxation of the cars of your orator, and its cars were not during said period taxed by ad valorem, and no tax was imposed on said cars except said tax of one dollar and fifty cents on each one hundred dollars of the receipts of your orator, which tax, in the absence of provision of law for any other property tax, although not authorized or warranted by any provision of the Constitution of said State of Florida, might well have been taken, and was by your orator taken to be in effect a commuted method of collecting a tax on its property, and taken to be in fact, though not specially provided by law, in lieu of other taxes thereon, but that in and by the Revenue Act passed by the Legislature of the State of Florida in 1907, to-wit, by Section 46 of said Chapter 5596, an ad valorem tax was imposed on the cars of Sleeping and Parlor Car Companies, and under that provision your orator has paid ad valorem taxes on its said cars within the State of Florida, as more fully set forth in paragraph four of this bill of complaint, and that your orator has continued to pay said tax of one dollar and fifty cents on each one hundred dollars of its receipts as provided in and by said Acts hereinbefore referred to until advised that said Section 47 of Chapter 5596 of the Laws of 1907 was not a constitutional exercise of power by the Legislature of the State of Florida, and that any and all proceedings to collect the tax provided for in said Section 47, or to take or seize your orator's property under authority thereof, or under any warrant issued pursu-

14 ant to Section 48 of said Chapter 5596 to carry out the provisions of said Section 47, would be a proceeding and taking and seizure under a void Act of the Legislature of the State of Florida, for the reason that said Act, to-wit, said Section 47, is not authorized under any provision of the Constitution of the State of Florida but on the contrary, by the limitations imposed in said Constitution

said Act is in effect prohibited, and also for the reason that no way is provided by which a hearing could or can be had to contest the legality of said Act as hereinbefore more fully set forth; and that any such taking or seizure of your orator's property would be a proceeding without due process of law, and in violation of the XIV Amendment of the Constitution of the United States, the protection of which your orator invokes.

19. That acting under the advice of Counsel, as to its rights in the premises, your orator did not make any return on or before the first day of January, 1910, nor make a report under oath of its secretary or other officer, or otherwise, of the total amount of its gross receipts derived from business done between points in the State of Florida, and did not pay into the Treasury of the State of Florida the sum of one dollar and fifty cents upon each one hundred dollars in said gross receipts, except under duress and compulsion, as hereinafter set forth, and by reason of your orator's failure and refusal to make such report of its gross receipts, and to pay the sum of one dollar and fifty cents upon each one hundred dollars of said gross receipts derived from business done between points in the State of Florida, a condition arose which, under said Section 47 of Chapter 5596, empowered and made it mandatory upon the said A. C.
15 Croom, as Comptroller, to estimate the amount of your orator's gross receipts, from such information as he might be able to obtain, and to add ten per cent to the amount of such tax as a penalty for your orator's failure to make report under said Section 47 of Chapter 5596 of the Laws of Florida, and under and by virtue of Section 48 of said Chapter 5596 to issue a warrant directed to the Sheriff of any County in the State of Florida where any of your orator's cars might be located, commanding him to collect by a levy and sale of your orator's cars, or any part thereof that might be located in the State of Florida, the full amount of said tax at the rate of one dollar and fifty cents upon each one hundred dollars of the gross receipts derived from business done between points in the State of Florida, or such sum as the Comptroller might have fixed as such gross receipts, under said Section 47, in default of a report being made as therein provided, and a penalty of ten per cent added to said tax, together with the costs and expenses of sale.

20. Your orator further shows that under said Section 48 of Chapter 5596 of the Laws of Florida, when the warrant of the Comptroller shall be issued and shall come to the hand of the Sheriff to whom it may be directed, it becomes his duty to levy same upon the cars or other property that your orator may have in the State of Florida, and that making a levy upon cars he is required to take corporal possession thereof, and that he is required by said Section 48, hereinbefore referred to, to make physical delivery of said cars to any purchaser buying under the sale had under and by virtue of the Comptroller's warrant, and in case no person shall bid the amount of the tax penalty due, including the costs and expense of sale, the property
16 shall be bid off for and delivered to the Comptroller to be disposed of by the Comptroller and the Governor of the State as in their judgment may be to the interest of the State.

21. Your orator further represents that there is no remedy at law by replevin or otherwise, by which your orator can repossess itself of its cars or of any of its property that might be seized under any warrant issued by the Comptroller under said Section 48 of Chapter 5596 to enforce the collection of the tax, as the Statute of the State of Florida, being Section 2176 of the General Statutes of the State, specifically provides that all affidavits in replevin shall state that the property of which possession is sought by the writ of replevin "has not been taken for any tax, assessment or fine levied by virtue of any law of the State of Florida."

22. Your orator further shows that the only property it has in the State of Florida consists of its cars and equipment, and appliances for furnishing meals, food and refreshment, parlor car chairs, berths, bedding, towels and other toilet facilities, and the desks and furniture in its office of small value and inadequate to pay more than a small part of the sum that would be required to satisfy any warrant which would be issued, as set forth in paragraph 19 of this bill of complaint; and therefore your orator avers that it had no property other than its cars upon which a levy could be made under the Comptroller's warrant issued in pursuance of Sections 47 and 48 of Chapter 5596 of the Laws of Florida.

23. That owing to the fact that your orator's parlor, dining and sleeping cars are being used on railroads in all of the States of
17 the Union under contracts for specific and different runs and routes, and under definite time contracts, and that all of its cars in repair and good condition assigned for service on such routes are in daily use on said runs and routes in different States of the Union, your orator is not able to supply other cars to take the place of cars in actual service in the State of Florida should said cars be seized and taken into corporal possession by the Sheriff of any County under warrant provided to be issued as set forth in Section 48 of Chapter 5596 of the Laws of Florida, and that the seizure of its cars, or any one or more of its cars, under any warrant or proceedings inaugurated under said Sections 47 and 48 would result in destruction of your orator's service and business in the State of Florida, and cause irreparable damage, damage of a character that could not be measured in a money value even if your orator had a remedy by an action at law to recover same, and which, as hereinbefore set forth, is not given to it under the laws or procedure under the laws of the State of Florida; and that a seizure of its cars would correspondingly inconvenience and disturb the travelling public and be a wide-spread and far-reaching disaster, paralyzing your orator's whole system in the section of country wherein Florida is situated and practically destroying same in the State of Florida, and forcing into idleness employés engaged as conductors, porters, cooks, waiters and agents; and that your orator is remediless to prevent action under said Section 47 and 48 of Chapter 5596 of the Laws of Florida, and to prevent irreparable injury and damage and disaster coming to it from a procedure by the defendant A. C. Croom, as Comptroller, under and by virtue of said Sections 47 and 48 of Chapter 5596, except in a court of equity.

18 24. Your orator further shows that by the peculiar construction of its dining, parlor and sleeping cars, by reason of the design thereof being adapted particularly and especially to the purposes for which they are used and the service in which they are employed, as hereinbefore set forth, no day or ordinary coach can be substituted for them or supply their place and the purpose they serve, and no other car is in use in the State of Florida, or in the United States, available to your orator, suitable or capable of taking or supplying the place of its cars should it be deprived of their use under any proceeding of the said A. C. Croom, as Comptroller of the State of Florida, under said Chapter 5596 of the Laws of Florida.

25. Your orator further shows that should its cars, or any of them, be seized under a procedure under and by virtue of said Chapter 5596 of the Laws of the State of Florida, there is no method provided under the laws of the State of Florida by which it could give bond and be restored to the possession of its cars until the day of sale arrived under the statute authorizing the Comptroller to issue his warrant and levy upon your orator's cars, but that the Sheriff would have corporal possession of same and retain the physical possession of same during all the time intervening between the seizure and sale of the cars, and which, under the law, would not be less than thirty days, even if expedition were exercised by the officer executing said warrant, and might be, and more probably would be, for a period of more than forty days, and might be as long as sixty days, or more, accordingly as the officer executing the warrant was or was not expeditious; and during said time said cars would be tied up and out of service, and your orator's business destroyed and its employés scattered, and incalculably irreparable damage
19 ensue before any future organization of its service could be effected.

26. Your orator further represents that at no stage of the proceedings under said Sections 47 and 48 of Chapter 5596 of the Laws of Florida, of 1907, is there any provision made by which your orator can be heard on the question of the amount of its tax or the constitutionality of the law under which it is fixed, since in the event that your orator did make a return as required by said Section 47 of Chapter 5596, the Comptroller is authorized by said Act to reject said return and fix the amount of gross receipts at such sum as he may deem proper; nor is opportunity given by said Act of the Legislature to test the validity and honesty and fairness of the tax before it becomes a fixed and permanent lien and charge upon the cars of your orator and before the Comptroller fixes the gross receipts of your orator and adds a penalty thereto and issues his warrant to the Sheriff of any County in which your orator's cars may be and have same levied upon and taken into physical custody and your orator deprived of its property without any warrant of law, but by virtue of a force that it could not resist and without any method provided at law by which it could be heard.

27. And your orator further represents that aside from the fact that no provision is made by the Laws of the State of Florida by

and through which your orator might be heard on the question of the amount of tax to be collected by the State through its Comptroller, as hereinbefore set forth, by and under the terms of said Section 47 of Chapter 5596 of the Laws of Florida, there is no limitation upon the judgment or discretion of the Comptroller in estimating the amount of your orator's gross receipts, and under and by virtue of said Section 47 the said Comptroller may
20 arbitrarily estimate the amount of your orator's gross receipts, and no way of being heard upon the question of the correctness or accuracy of the said Comptroller's estimate is provided by the Laws of the State of Florida in the event that your orator should fail to make a report to the said Comptroller before the first of January of any year of the total amount of gross receipts derived from business done between points in the State of Florida, and under the terms of said Section 47 your orator is not allowed to make a report of its gross receipts outside of and independent of the payment of the tax assessed upon the basis of any amount at which the Comptroller may fix the gross receipts of your orator arising from business between points in the State of Florida, without any limitation upon his discretion or judgment, but your orator is required by said Section 47 at the time of making the report to the Comptroller of its gross receipts derived from business done between points in the State of Florida, in the event it made a report, actually to pay the tax, and for the recovery back of which when paid under said void law no method or procedure is provided or recognized by the Laws of the State of Florida, but, on the contrary, the right to recover same back is actually denied, and this construction has been and is upheld by the Supreme Court of the State of Florida, the highest Appellate Court in the State.

28. And your orator further alleges that it is advised that aside from the fact that said Section 47 of Chapter 5596 is void by reason of the lack of constitutional authority to enact same, it would be void by its terms even if there had been warrant of authority for the enactment, which is denied, for the reasons hereinbefore set forth, by reason of a lack of any opportunity at any time
21 to be heard upon any question connected with the tax sought to be collected thereunder, and its absolute lack of any provision for contesting any question regarding the tax imposed thereunder, either before or after its imposition, and the absolutely hopeless position of your orator in any way at law to protect its property from sale under any warrant that the Comptroller may issue under said Section 47 of Chapter 5596, should your orator fail to make a report and pay the tax as therein provided, or to be heard at law as to whether its property is amenable to sale for a failure to make such report and pay such tax, or even to relieve its property by bond pending its advertisement for sale under any warrant that the Comptroller may issue and relieve same from seizure thereunder by the Sheriff, as hereinbefore more fully set forth.

29. Your orator further represents that a denial to your orator of the relief hereinafter prayed for in this bill of complaint, would leave your orator wholly without a remedy of any kind or character,

and to the disposition of the said A. C. Croom, as Comptroller of the State of Florida, within the limits of his discretion, and take from your orator the use of its cars and prevent your orator from performing its contracts with the railroad companies with which your orator has contracted to furnish cars, and from furnishing the public with accommodations and service in its cars as hereinbefore specified, as it cannot supersede the refusal of this Court to grant the relief hereinafter prayed, your orator thereby being placed in the dilemma of electing to pay the tax and actually paying same, or submitting to the seizure and sale of its cars and the disruption of its business as hereinbefore set forth, or upon a refusal of the relief herein prayed refuse to pay the tax and enter an appeal
22 to the Supreme Court of the United States without the right to supersede the order refusing the relief prayed, and permit its cars to be seized by the Sheriff or Sheriffs to whom the said A. C. Croom, Comptroller, might send his warrant or warrants, and to be taken into physical custody and sold and thereby wholly lost to your orator, and prevent your orator's performance of its contracts, and the furnishing of accommodations and service to the public as hereinbefore set forth.

30. That your orator not having made any report before the first days of January, 1910 and 1911, to the said A. C. Croom, as Comptroller of the State of Florida, of the total amount of its gross receipts derived from business done between points in the State of Florida, and not having paid into the State Treasury the sum of one dollar and fifty cents upon each one hundred dollars of the gross receipts received by your orator from business done between points in the State of Florida, as is provided in and by Section 47 of Chapter 5596 of the Laws of Florida, the said A. C. Croom, as Comptroller of the State of Florida, demanded, by wire, that these reports be sent in and the tax paid at once, and that in default thereof he would at once proceed to exercise the power given him under the Statutes of the State of Florida hereinbefore referred to and set forth.

31. And your orator further represents that it has at all times, at Jacksonville, Duval County, Florida, a number of its parlor, dining and sleeping cars easily accessible for a levy and seizure under any warrant that might be issued by the said A. C. Croom, as Comptroller, as hereinbefore set forth, and that the most of said cars are engaged in inter-state business, and that by reason of your
23 orator being compelled in the orderly transaction of its business to have a number of its cars of different types which run into and out of said City of Jacksonville, at said City of Jacksonville, it is rendered easy and possible for any Sheriff to whom the said A. C. Croom, as Comptroller, may issue his warrant for the collection of said tax and penalty as hereinbefore stated, to seize and tie up cars and paralyze your orator's business, without any opportunity upon the part of your orator to be heard as to the legality of the tax at law, and without the right at law to relieve the situation by a bond, or to regain possession of its cars without first paying this tax.

32. Your orator further states that after the failure and refusal of your orator to make reports and pay the tax as demanded in said telegram to which reference is hereinbefore made, from the Comptroller of the State of Florida, the said Comptroller did, on the 28 day of February, 1911, serve notice upon your orator that unless your orator made report on or before March 9, 1911, of the total amount of the gross receipts derived and received from business done in the State of Florida for the years 1908, 1909 and 1910, respectively, he would proceed to ascertain the amount of tax, as provided by Section 47, Chapter 5596 of the Laws of Florida, and take such further action under said Section of the Laws of the State as he might be authorized thereto, a copy of which notice is hereto attached, marked "Exhibit A," and made a part of this bill of complaint.

33. Your orator further shows that after receiving said notice it made a return to the Comptroller, on March 3, 1911, under protest, of its gross receipts for the year ending October 31, 1909,
24 derived from business done in the State of Florida, as $215,557.34, a copy of which return is hereto attached, marked "Exhibit B" and made a part of this bill of complaint.

And at the same time your orator made a return, under protest, of its gross receipts for the year ending October 31, 1910, from business done in the State of Florida, as $249,201.36, a copy of which is hereto attached, marked "Exhibit C" and made a part of this bill of complaint.

But your orator did not make any return as to its gross receipts for the year ending October 31, 1908, as the taxes for that year had been previously reported and paid.

34. Your orator further represents that it did not, when said above mentioned returns under protest were made, pay the tax money as required by Section 47 of Chapter 5596 of the Laws of Florida to be paid simultaneously with the making reports of the gross receipts, and that thereupon, on March 13, 1911, the said A. C. Croom, as Comptroller of the State of Florida, issued the warrant of the State of Florida, to R. F. Bowden, Sheriff of Duval County, Florida, commanding him to collect by levy and sale of the property of your orator, $6,971.38, that being the amount of tax arbitrarily levied upon your orator under Section 47 of Chapter 5596 aforesaid.

35. Your orator further represents that upon receiving said warrant the said R. F. Bowden, as Sheriff of Duval County, Florida, did at once proceed to execute same, and levied upon and seized and took into his possession the parlor car named "Grace" of the property of your orator; and that after the said R. F. Bowden, as
25 Sheriff, had taken possession of said car under said warrant, and while said car was in possession of said Sheriff, in order to obtain a release thereof, there being no other way or remedy provided by law, your orator paid the tax for the years 1909 and 1910, amounting to $6,971.38, and $30.00 costs; and thereupon the said Sheriff did release and surrender said car so levied upon, to your orator.

A copy of said warrant so issued to said Sheriff under which said seizure was made, is hereto attached, marked "Exhibit D" and made a part of this bill of complaint.

A copy of the return of the Sheriff on said warrant hereinbefore mentioned, is hereto attached, marked "Exhibit E" and made a part of this bill of complaint.

A copy of the receipt of the said R. F. Bowden, Sheriff, for said moneys paid under said warrant, is hereto attached, marked "Exhibit F" and made a part of this bill of complaint.

36. And your orator avers and charges that all of the procedure that might or could be or was had under and by virtue of Sections 47 and 48 of Chapter 5596 of the Laws of Florida, as hereinbefore outlined and set forth, or any proceedings to enforce by any means the payment of any tax claimed to be due under said Section 47 of Chapter 5596, would be and were in violation of your orator's rights under the Laws and Constitution of the United States, and a proceeding and proceedings without due process of law and without your orator having ever had a day in court, and without your orator ever having a chance to have a day in court or to be heard in a court of law.

26 37. Your orator further states that the said A. C. Croom, Comptroller of the State of Florida, as your orator is informed and believes, is not *pecuniarily* able to respond to such damages as would inure to your orator even if such damages were capable of ascertainment and which your orator avers would be of a character not measureable in a court of law, and that the bond of the said Comptroller does not cover damages of such character.

38. That said tax, as provided for under and by virtue of said Section 47 of Chapter 5596 of the Laws of Florida, is a recurring tax and under and by virtue thereof your orator is required on or before the first day of January, 1912, and annually thereafter, to report to the Comptroller of the State of Florida, under oath, as therein provided, the total amount of its gross receipts derived from business done between points in the State of Florida, and at the same time to pay into the State Treasury the sum of one dollar and fifty cents upon each one hundred dollars of said gross receipts, or, failing so to report and pay the tax, incur the penalty and the irreparable injury and damage that may follow, and that unless restrained and enjoined by the writ of injunction of this Honorable Court the said A. C. Croom, as Comptroller, will, upon the failure of your orator to make report of its gross receipts and pay the tax of one dollar and fifty cents upon each one hundred dollars of the gross receipts so reported, on or before the first day of January, 1912, arbitrarily fix the amount of said tax and add a ten per cent penalty thereto, and issue a warrant and have same levied upon, through a Sheriff of the State, and seize and take into possession your orator's

27 car or cars, and your orator is powerless to prevent same or to get any relief from such arbitrary and unconstitutional acts, save and except in a court of equity.

39. Your orator further says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum of Two Thousand

Dollars, and that this suit arises under the Constitution and Laws of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is relievable only in a Court of Equity where matters of this kind are properly recognizable and relievable, your orator therefore prays the aid of this Honorable Court, and prays that a writ of injunction be issued out of and under the seal of this Honorable Court, commanding and enjoining and restraining the defendant A. C. Croom, as Comptroller of the State of Florida, and all persons claiming to act under his direction or control, absolutely to desist and refrain from making any estimate of the amount of the gross receipts of your orator derived from business done between points in the State of Florida, either from such information as he may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent as a penalty, as is provided in and by Section 47 of Chapter 5596 of the Laws of Florida, of 1907, and from issuing and delivering or sending any warrant directed to any Sheriff of the State of Florida commanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 47 of Chapter 5596 of the Laws of Florida of 1907, and from making
28 or having made by any officer a levy upon any of your orator's cars or other property under any warrant issued under and by virtue of said Section 47 of Chapter 5596, and from seizing or taking into custody any of your orator's cars or other property thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatever which he, the said A. C. Croom, as Comptroller of the State of Florida, or any person acting under his direction or control, may claim to be due as tax or penalty upon any amount or estimated amount of gross receipts under said Section 47 of Chapter 5596, until such time as Your Honor shall appoint and direct and order herein, and that upon such hearing herein the writ herein prayed for be made and confirmed until the final determination of this suit, and that thereupon the said injunction may be made perpetual, and that Section 47 of Chapter 5596 of the Laws of Florida, approved June 18, 1907, hereinbefore referred to, may be declared null and void and of no effect by the decree of this Honorable Court, in this cause; and that W. V. Knott, Treasurer of the State of Florida, may, by the decree and order of this Honorable Court, be directed and compelled to pay back to your orator the sum of $6,971.38, and $30.00 costs paid by your orator to R. F. Bowden, as Sheriff of Duval County, Florida, under duress of levy and seizure of your orator's car "Grace" under the warrant issued by the Comptroller of the State of Florida, as hereinbefore stated, with interest thereon, and which said sums of money were paid by the said R. F. Bowden, Sheriff, to W. V. Knott, as Treasurer of the State of Florida, and that your orator may have such other and further relief in the premises as the nature and circumstances of this case may require and to Your Honor shall seem meet and proper.

29 May it please this Honorable Court to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said defendants A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida, therein and thereby commanding them, and each of them, on a day certain therein to be fixed and under a certain penalty to be therein named, to be and appear before this Honorable Court, then and there to answer, but not under oath (such oath being expressly waived), all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against the said A. C. Croom, as Comptroller of the State of Florida, and against W. V. Knott, as Treasurer of the State of Florida, in the premises, or shall seem meet and agreeable to equity and good conscience, and your orator, as in duty bound, will ever pray, etc.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE,
Its Attorney.

JOHN E. HARTRIDGE,
Att'y and of Counsel for Complainant.

30 STATE OF FLORIDA,
County of Duval:

Personally appeared before me, a Notary Public duly commissioned and qualified to act in and for the State and County aforesaid, John C. Burrowes, who, being duly sworn, deposes and says that he is District Superintendent of The Pullman Company, the complainant in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof, and that the facts therein stated as of complainant's own knowledge are true, and that the facts therein stated upon complainant's information and belief he believes to be true.

JNO. C. BURROWES.

Sworn to and subscribed before me this 15 day of December, A. D. 1911.

[Seal E. M. Rorabeck, Notary Public, State of Florida at Large.]

E. M. RORABECK,
Notary Public, State of Florida at Large.

My Commission Expires Dec. 19, 1911.

31 EXHIBIT "A."

TALLAHASSEE, FLORIDA, *Feb'y 28th*, 1911.

The Pullman Company, Jacksonville, Florida.

GENTLEMEN: Your company having failed to comply with the requirements of Section 47, of Chapter 5596 of the Laws of Florida, you are hereby respectfully requested to make report to me as Comp-

troller of the State of Florida, on or before March 10th, 1911, at Tallahassee, Florida, of the total amount of gross receipts derived and received by your company from business done between points within the State of Florida, for the years 1908, 1909 and 1910, respectively, and at the same time you make the said report you are requested to pay into the State Treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts, it being your duty to make such report and to make said payment under the provisions of said Section 47, of Chapter 5596 of the Laws of Florida.

You are further notified that should you fail to comply with the foregoing request and the law therein referred to, I shall then, as Comptroller of the State of Florida, on March 11th, 1911, at my office in the State Capitol at Tallahassee, Florida, beginning at 10 o'clock A. M., proceed in accordance with the provisions of the said Section 47 of Chapter 5596 of the Laws of Florida, to ascertain and fix the amount of such gross receipts for the years 1908, 1909 and 1910, respectively, and you are hereby notified and requested to be present at said place and time, when I shall give you a hear-
32 ing upon the question of the amount of the gross receipts of your company derived from business done between points within the State of Florida.

In this connection I wish to bring to your attention the order of the Court upon your recent application for a temporary injunction seeking to restrain this tax, the order being as follows:

"This cause came on to be heard upon an application for an injunction pendente lite before Don A. Pardee, A. P. McCormick and D. D. Shelby, Circuit Judges, sitting in Chambers in the City of New Orleans, and was argued upon bill and affidavits, by John E. Hartridge, Esq., for the complainant, and the Hon. Park Trammell, Attorney General of the State of Florida, for defendant.

"Whereupon, and on due consideration, the said Judges being of opinion that Section 47, Chapter 5596 of the Laws of Florida, approved June 18th, 1907, taken in connection with Chapter 5597 of Florida, approved the same day, provided for a graded license tax on all sleeping and parlor car companies operating their cars in the State of Florida, and is within the legislative power of the State; and, further, that the said complainant can have no standing in equity to resist the tax levied under said law until it shall have made the return provided for therein and paid the taxes thereon, the said application is Denied."

This notice given February 28, 1911.

(Signed) A. C. CROOM.
Comptroller, State of Florida.

33 EXHIBIT "B."

CHICAGO, ILLINOIS, *March* 3, 1911.

To the Comptroller of the State of Florida, Tallahassee, Florida.

SIR: The Pullman Company hereby protests that Section 47 of Chapter 5596 (No. 1) of the Laws of Florida for 1907, is not author-

ized by the Constitution of the State of Florida, but, on the contrary, is inhibited by said Constitution, and is unconstitutional, illegal and void, and is not due process of law, and that no valid tax can be imposed thereunder, but, on demand from you, said Company hereby reports to you under said protest that its total gross receipts derived from business done between points in the State of Florida for the year ending October 31, 1909, were $215,557.34.

THE PULLMAN COMPANY,
By A. S. WEINSHEIMER,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

A. S. Weinsheimer, being duly sworn, states upon his oath that he is Secretary of The Pullman Company; that he has read the foregoing report and is acquainted with the contents thereof, and that the same is true and correct.

A. S. WEINSHEIMER.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this 3rd day of March, A. D. 1911.

[SEAL.] THOMAS RIDER,
Notary Public.

34 EXHIBIT "C."

CHICAGO, ILLINOIS, *March* 3, 1911.

To the Comptroller of the State of Florida, Tallahassee, Florida.

SIR: The Pullman Company hereby protests that Section 47 of Chapter 5596 (No. 1) of the Laws of Florida for 1907 is not authorized by the Constitution of the State of Florida, but, on the contrary, is inhibited by said Constitution, and is unconstitutional, illegal and void, and is not due process of law, and that no valid tax can be imposed thereunder, but, on demand from you, said Company hereby reports to you under said protest that its total gross receipts derived from business done between points in the State of Florida for the year ending October 31, 1910, were $249,201.26.

THE PULLMAN COMPANY,
By A. S. WEINSHEIMER,
Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

A. S. Weinsheimer, being duly sworn, states upon his oath that he is Secretary of The Pullman Company; that he has read the foregoing report and is acquainted with the contents thereof, and that the same is true and correct.

A. S. WEINSHEIMER.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this 3rd day of March, A. D. 1911.

THOMAS RIDER,
Notary Public.

[SEAL.]

35 EXHIBIT "D."

Treasury Department, State of Florida.

A. C. Croom, Comptroller.

(In God We Trust.) COMPTROLLER'S OFFICE,
TALLAHASSEE, *March* 13, 1911.

Honorable R. F. Bowden, Sheriff, Duval County, Jacksonville, Forida, Greetings:

You are hereby commanded to collect by levy and sale in the same manner as is now provided by law for the sale of property under execution from the Circuit Court of the sleeping or parlor cars belonging to The Pullman Company, operated or located in the State of Florida, the sum of Six Thousand Nine Hundred and Seventy-one dollars and thirty-eight cents (6,971.38) that being the amount due to the State of Florida by the said The Pullman Company for taxes levied upon said Company under Section 47 of Chapter 5596 of the Laws of Florida on its gross earnings for two years from October 31, 1908, to October 31st, 1910, which said sum is now due and unpaid, together with the costs and expenses of sale, and you will make due return to this office.

Given under my hand and official seal this thirteenth day of March, A. D. 1911.

A. C. CROOM.
Comptroller, State of Florida.

Comptroller's office, State of Florida, Defendo.

36 EXHIBIT "E."

STATE OF FLORIDA,
Duval County:

By virtue of the within warrant, I did, on the 15th day of March, A. D. 1911, levy the same upon the following described property of the within named defendant, The Pullman Company, that is to say, one parlor car named "Grace," as I am commanded, and did take physical possession and custody of said car and have said car now in my possession for the payment of Six Thousand Nine Hundred and Seventy-one Dollars and Thirty-eight cents ($6,791.38) and costs.

R. F. BOWDEN,
Sheriff in and for Duval County, Florida,
By G. H. THAMES,
Deputy Sheriff.

37 EXHIBIT "F."

STATE OF FLORIDA,
Duval County:

I, R. F. Bowden, Sheriff in and for Duval County, Florida, do hereby acknowledge that I have received this 15th day of March,

1911, from the defendant, The Pullman Company, six thousand nine hundred and seventy-one dollars and thirty-eight cents ($6,971.38), the amount named in the foregoing writ, and on account of which, levy was made upon the parlor car "Grace," as hereinbefore set forth in the return of said warrant, together with thirty dollars ($30.00) costs, and have in consequence of said payment released said car from said levy and returned same to The Pullman Company.

R. F. BOWDEN,
Sheriff in and for Duval County, Florida.
By G. H. THAMES,
Deputy Sheriff.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer. Bill of Complaint, John E. Hartridge, Solicitor for Complainant. Filed December 18th, 1911. F. W. Marsh, Clerk.

38 And afterwards, to-wit: the said 18th day of December, A. D. 1911, was filed in the office of the Clerk of said Court a Notice of Application for Injunction, which is in the words and figures following, to-wit:

In the United States Circuit Court for the Northern District of Florida, Fifth Judicial Circuit, Sitting in Equity.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida.

To the Honorable Albert W. Gilchrist, Governor of the State of Florida, Honorable Park Trammell, Attorney General of the State of Florida, Honorable A. C. Croom, Comptroller of the State of Florida:

You, and each of you, will please take notice that I will, on Thursday, the twenty-first day of December, A. D. 1911, at eleven o'clock A. M., or as soon thereafter as I can be heard, at New Orleans, in the State of Louisiana, or at such place and at such date thereafter as may be fixed pursuant to the United States Statute in such case made and provided, move before the Honorable Don A. Pardee, Circuit Court Judge in and for the Fifth Judicial Circuit of the United States, for a temporary injunction to restrain and enjoin Honorable A. C. Croom, as Comptroller, the defendant herein, and all persons acting by or under his authority or direction from making any estimate of the amount of the gross receipts of The Pullman Company derived from business done between points in the State of Florida, either from such information as the said A. C. Croom, the defendant, may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent. as a penalty, and from issuing and delivering, or sending any warrant

directed to any Sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 47 of Chapter 5596, and from seizing or taking into custody any of the cars, or other property, of The Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that the said A. C. Croom, as Comptroller, may claim to be due as a tax or penalty upon any amount or estimated amount of
39 gross receipts under Section 47, Chapter 5596, on the ground that said law is unconstitutional and void.

JOHN E. HARTRIDGE,
Attorney for The Pullman Company.

Service of a true copy of the foregoing notice received and accepted, this the 8th day of December, A. D. 1911.

ALBERT W. GILCHRIST,
Governor of the State of Florida.
PARK TRAMMELL,
Attorney General of the State of Florida.
A. C. CROOM,
Comptroller of the State of Florida.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company, a Corporation, vs. A. C. Croom, as Comptroller of the State of Florida. Notice of Application for Temporary Injunction. *H*ohn E. Hartridge, Attorney for Complainant. Filed December 18, 1911, F. W. Marsh, Clerk.

Whereupon, to-wit:—The 18th day of December, A. D. 1911, there issued out of the office of the Clerk of said Court a Chancery Subpœna directed to the Marshal of the said District, which was thereupon delivered to him, and was by him executed and returned into the said Clerk's office, with his return endorsed thereon, which writ, together with the said return, is in the words and figures following, to-wit:—

40 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida, and Citizens of Said State:

We command you, and every of you, that you appear before the Judges of the Circuit Court of the United States of America, for the Fifth Circuit and Northern District of Florida, at Pensacola, Fla., in said District, on the First Monday, being the 5th day of February, A. D., 1912, to answer to a bill of complaint exhibited against you by The Pullman Company, a corporation chartered and existing under and by virtue of the laws of the State of Illinois, and having its place of business in the City of Chicago, County of Cook, and State of Illinois, and filed in the Clerk's office of said Court, and then and

there to receive and abide by such judgment and decree as said Court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the Marshal of the United States, to execute and return.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States and the Seal of this Court, at the City of Pensacola, Fla., in the said District, this 18th day of December, A. D. 1911.

[SEAL.] F. W. MARSH, *Clerk.*

JOHN E. HARTRIDGE,
Solicitor for Compl't.

Memorandum.

The above named Defendants are notified that unless they shall enter their appearance in the Clerk's office of said Court, at Pensacola, Fla., aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

[SEAL.] F. W. MARSH, *Clerk.*

41 Endorsed: Civ. 938. No.—. Circuit Court, United States, Northern District of Florida. The Pullman Co., a Corporation, chartered under the laws of the State of Illinois, etc., vs. A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer of the State of Florida, and citizens of said State, etc. Chancery Subpœna. Returnable to Rule Day, First Monday in February, A. D. 1912. John E. Hartridge, Complainant's Solicitor. Filed Dec. 28, 1911. F. W. Marsh, Clerk.

Marshal's Return.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named A. C. Croom, Comptroller of the State of Florida, and W. V. Knott, Treasurer of the State of Florida, by handing to and leaving a true copy thereof with each and every of them personally at Tallahassee, in said District, on the 19th day of Dec., A. D. 1911.

T. F. McGOURIN,
U. S. Marshal.
By W. L. STRICKLAND,
Deputy.

Filed Dec. 28, 1911.
F. W. MARSH, *Clerk.*

42 And afterwards, to-wit:—Upon the 20th day of December, A. D. 1911, came the Solicitor for the Complainant, and filed in the office of the Clerk of said Court a motion for an injunction against the said defendants, which was in the words and figures following, to-wit:—

In the United States Circuit Court for the Northern District of Florida, in the Fifth Judicial Circuit, Sitting in Equity.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida, et al.

Now comes the complainant in the above entitled suit, The Pullman Company, by John E. Hartridge, Complainant's Solicitor and Counsel, pursuant to notice given to the Honorable Albert W. Gilchrist, Governor of the State of Florida, Honorable Park Trammell, Attorney General of the State of Florida, and Honorable A.C. Croom, Comptroller of the State of Florida, on the eighteenth day of January, 1911, and moves this Honorable Court to grant a writ of injunction against the said A. C. Croom, as Comptroller, and all persons acting by or under his authority or direction, from making any estimate of the amount of the gross receipts of The Pullman Company derived from business done between points in the State of Florida, either from such information as the said A. C. Croom, the defendant, may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent. as a penalty, and from issuing and delivering, or sending any warrant directed to any Sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 47 of
43 *of* Chapter 5596 of the Laws of the State of Florida, and from seizing or taking into custody any of the cars, or other property, of The Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that the said A. C. Croom, as Comptroller, may claim to be due as a tax or penalty upon any amount or estimated amount of gross receipts under Section 47, Chapter 5596 of the Laws of the State of Florida, on the ground that said law is unconstitutional and void for the reasons stated in the bill of complaint now on file in the Circuit Court of the United States for the Northern District of Florida, pending this suit, and until a further order of the Court, conformable to the prayer of the bill in such case filed.

JOHN E. HARTRIDGE,
Solicitor and of Counsel for Complainant.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company, a corporation, vs. A. C. Croom, as Comptroller et al. Motion for Injunction. John E. Hartridge, Attorney for Plaintiff. Filed December 20, 1911. F. W. Marsh, Clerk.

And afterwards, to wit:—On the 21st day of December, A. D. 1911, there was filed in the said cause the affidavit of A. C. Croom, Comptroller, which is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida.

In Chancery.

THE PULLMAN COMPANY, a Corporation, Complainant,
vs.
A. C. CROOM, Comptroller of the State of Florida, Defendant.

Affidavit.

STATE OF FLORIDA,
County of Leon:

Upon being duly sworn, A. C. Croom, says that as Comptroller of the State of Florida, he received from the Pullman Company, the complainant in the above styled suit, the tax return of its
44 cars within the State of Florida for the year 1911; that upon said return said Company reported that it had within Florida one extra sleeping car which was not assigned by said list to any particular route; that for taxation purposes the said company reported on said return of 1910 part of its cars at a valuation of $3,000 and some at $5,000 each. That affiant is more or less familiar with the value and the class of Pullman cars used by the said company in the State of Florida, that the said cars, in his opinion, are worth from $12,000 to $25,000 each. That the tax of $1.50 per $100.00 on the gross receipts of the said Pullman Company within Florida, for the year 1910 was $3,738.00. That affiant believes that the said tax for the year 1911 would not exceed $4,500.00. That affiant believes that the said company constantly keeps at Jacksonville, Florida, one extra car and that a levy upon this car would be sufficient upon which to realize the amount of the $1.50 tax upon each $100.00 gross receipts of said Pullman Company within the State of Florida, for the year 1911. That should affiant issue his warrant for the collection of said tax on gross receipts it would not be his purpose to disturb, interfere with and damage the business of the said Pullman Company within the State of Florida, or elsewhere.

A. C. CROOM.

Sworn to and subscribed before me this 19th day of December, A. D. 1911.

[SEAL] W. W. McINTOSH, JR.,
Notary Public, State of Florida.

My Commission expires April 28, 1912.

Endorsed: In the Circuit Court of the United States for the Northern District of Florida. In Chancery. The Pullman Company, a corporation, vs. A. C. Croom, Comptroller of the State of Florida, Defendant. Affidavit of A. C. Croom. Filed Dec. 21, 1911. D. A. Pardee, Judge.

4—921

And afterwards, to-wit:—Upon the 21st day of December, A. D. 1911, the Judges of the Circuit—the Honorable Don A. Pardee, and the Honorable D. D. Shelby, and District Judge T. S. Maxey, made and caused to be entered of record, an Order denying Injunction, which is in the words and figures following, to-wit:—

45 United States Circuit Court, Northern District of Florida.

In Equity.

THE PULLMAN COMPANY
v.
A. C. CROOM, Comptroller.

This cause came on to be heard upon application for an injunction pendente lite before Don A. Pardee, and D. D. Shelby, Circuit Judges, and T. S. Maxey, District Judge, sitting in Chambers in the City of New Orleans, and was argued upon bill and affidavits by John E. Hartridge, Esq., for the complainant, and the Hon. Park Trammell, Attorney General of the State of Florida, for defendant.

Whereupon, and on due consideration, the said Judges being of opinion that Section 47, Chapter 5596 of the Laws of Florida, approved June 18, 1907, taken in connection with Chapter 5597 of the Laws of Florida, approved the same day, provided for a graded license tax on all sleeping and parlor-car companies operating their cars in the State of Florida, and is within the legislative power of the State,—

The said application is denied.

New Orleans, La., December 21st, 1911.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
T. S. MAXEY,
District Judge.

Endorsed: The Pullman Company, a corporation, vs. A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer, of the State of Florida. Order denying injunction pendente lite. Filed Dec. 21, 1911, F. W. Marsh, Clerk.

And afterwards, to-wit: on the 21st day of December, 1911, came the Complainant, and filed in the office of the Clerk of said Court a Petition for an Appeal from the said Order denying Motion for Injunction, which Petition is in the words and figures following, to-wit:

46 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller for State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

The above named Plaintiff, feeling itself aggrieved by the decree made and entered on the 21 day of December, 1911, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for reasons specified in the Assignment of Errors filed herewith and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court, at Washington, D. C., as is provided by law.

JOHN E. HARTRIDGE,
Attorney for Plaintiff

December 21, 1911.

The foregoing claim of appeal is allowed

DON A. PARDEE,
Circuit Judge

December 21, 1911.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, et al. John E. Hartridge, Attorney for Plaintiff. Petition for Appeal. Filed Dec. 21, 1911. F. W. Marsh, Clerk.

And afterwards, to-wit — on the 21st day of December, A. D. 1911, the Honorable Don A. Pardee, Circuit Judge, made and caused to be entered of record, an Order allowing an Appeal, which is in the words and figures following, to-wit:

47 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller, and W. V. KNOTT, as Treasurer, of the State of Florida.

Now, on this 21 day of December, A. D. 1911, pursuant to the application for appeal, it is ordered that the above appeal be allowed returnable to the Supreme Court of the United States within thirty days from this date, upon the Plaintiff, The Pullman Company, a corporation organized under the laws of the State of Illinois, giv-

ing bond with surety in the sum of Two Hundred and Fifty Dollars, for the payment of damages and costs, conditioned as required by law, payable to the defendants, A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida.

Done and ordered at New Orleans, Louisiana, this 21st day of December, A. D. 1911.

DON A. PARDEE,
— *United States Circuit Court in and for the Fifth Judicial Circuit.*

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company, a Corporation, vs. A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer. Order Allowing Appeal. John E. Hartridge, Attorney for Plaintiff. Filed Dec. 21, 1911, F. W. Marsh.

And afterwards, to-wit:—upon the 21st day of December, A. D. 1911, was filed in the office of the Clerk of said Court, the Assignment of Errors in the said cause, which is in the words and figures following, to-wit:—

48 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller for the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

Now comes the Plaintiff, The Pullman Company, by John E. Hartridge, its Solicitor and Attorney, and having prayed an appeal to the Supreme Court of the United States from an order entered on the 21st day of December, 1911, refusing and denying the application of the plaintiff for a temporary injunction pursuant to the prayer of the bill of complaint in this case, and respectfully represents as grounds of appeal and as an assignment of errors herein that the said Circuit Court erred in the following particulars:

1. In holding that under the facts set up in the bill of complaint the Plaintiff was not entitled to the injunction as prayed in the bill.

2. In holding that there were power and authority under the Constitution of the State of Florida to levy the income tax as provided in Section 47 of Chapter 5596 of the Laws of Florida complained of in the bill of complaint.

3. That the Court erred in holding Section 47 of Chapter 5596 of the Laws of Florida as a valid, existing law, and not in violation of the principle of due process of law.

49 4. The Court erred in holding that Section 47 of Chapter 5596 of the Laws of Florida is within the amendment of the Constitution of the United States regarding due process of law.

5. The Court erred in entering the order entered in this case denying the prayer of the bill of complaint.

Wherefore, the plaintiff prays that said order and decree may be reversed.

JOHN E. HARTRIDGE,
Solicitor and Attorney for Plaintiff.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, et al., John E. Hartridge, Attorney for Plaintiff. Assignment of Errors. Filed Dec. 21, 1911. Don. A. Pardee, Judge. Filed Dec. 21, 19-1, F. W. Marsh, Clerk.

And afterwards, to-wit:—upon the said 21st day of December, A. D. 1911, was filed in the office of the Clerk of the said Court the Appeal Bond in the said cause, which is in the words and figures following, to-wit:—

50 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller for the State of Florida, and W. V. KNOTT, as Treasurer for the State of Florida.

Know all men by these presents, That we, The Pullman Company, a corporation created, existing and being under the laws of the State of Illinois, as Principal, and L'Engle Hartridge and E. M. Rorabeck, as Sureties, are held and firmly bound unto A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer for the State of Florida, in the full and just sum of Two Hundred and Fifty ($250.00) and No 100 Dollars, to be paid to the said A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer, or their successors in office, to which payment well and truly to be made, The Pullman Company binds itself, its successors and assigns, and the sureties severally bind themselves, their heirs, executors and administrators.

Sealed this 21 day of December, 1911.

Whereas, lately, Circuit Judges Don A. Pardee, and David D. Shelby T. S. Maxey, District Judge, did deny the application for a temporary injunction applied for upon the part of The Pullman Company, and the said The Pullman Company has entered and obtained an order allowing an appeal to reverse the order and decree denying a temporary writ of injunction, so made by said
51 Circuit Judges, to reverse the order and decree made therein, and a citation directed to the said A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer, directing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States on the 18 day of January, A. D. 1912 next.

Now, the condition of this obligation is such that if the said The Pullman Company, shall prosecute said appeal to effect and answer all damages and costs, if it fail to make good said appeal, then the above obligation to be void, else to remain in full force and virtue.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE,
Its Attorney.
L'ENGLE HARTRIDGE. [SEAL.]
E. M. RORABECK. [SEAL.]

Approved by:

DON A. PARDEE,
United States Circuit Judge.

Endorsed: United States Circuit Court, Northern District of Florida. The Pullman Company, a Corporation, vs. A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer. Appeal Bond. John E. Hartridge, Attorney for Plaintiff. Filed Dec. 21, 1911, F. W. Marsh, Clerk.

52 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

To A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden in the City of Washington, District of Columbia, in the United States, wherein The Pullman Company is Appellant, and you, A. C. Croom and W. V. Knott are defendants; to show cause, if any there be, why the order and decree of Judges Don A. Pardee, T. S. Maxey and David D. Shelby, as within the appeal mentioned, should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 21st day of December, in the year of our Lord, 1911.

DON A. PARDEE,
Circuit Judge.

53 UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the Circuit Court of the United States within and for the Northern District of Florida, and the Fifth Judicial Circuit, do hereby certify, that the foregoing pages, numbered from one to fifty-two, both inclusive, constitute a true, perfect

and correct transcript of the record and proceedings and Order of the Judges of the said Court thereof, in the case of the Pullman Company, a corporation, vs. A. C. Croom, as Comptroller of the State of Florida, et al., as the same remain on file and of record in said Court.

In testimony whereof, I have hereunto set my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 29th day of December, A. D. 1911.

[Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH, *Clerk.*

54 In the United States Circuit Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

To A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden in the City of Washington, District of Columbia, in the United States, wherein The Pullman Company is Appellant, and you, A. C. Croom and W. V. Knott are defendants; to show cause, if any there be, why the order and decree of Judges Don A. Pardee, T. S. Maxey and David D. Shelby, as within the appeal mentioned, should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 21st day of December, in the year of our Lord, 1911.

DON A. PARDEE,
Circuit Judge.

[Endorsed:] United States Circuit Court, Northern District of Florida. The Pullman Company, a Corporation, vs. A. C. Croom, as Comptroller, and W. V. Knott, as Treasurer. Citation. John E. Hartridge, Attorney for Plaintiff. Filed at — o'clock a. m., Dec. 21, 1911. F. W. Marsh, Clerk.

55 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Citation on the therein-named A. C. Croom, Comptroller of the State of Florida,

& W. V. Knott, Treasurer of the State of Florida, by handing to and leaving a true and correct copy thereof with each and every of them personally at Tallahassee in said District on the 28th day of Dec. A. D. 1911.

T. F. McGOURIN,
U. S. Marshal;
By W. L. STRICKLAND,
W.,
Deputy.

Endorsed on cover: File No. 22,997. N. Florida C. C. U. S. Term No. 921. The Pullman Company, appellant, vs. A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida. Filed January 8th, 1912. File No. 22,997.

Filed.
APR 7 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1912.

No. 28

THE PULLMAN COMPANY, APPELLANT,

vs.

A. C. CROOM, COMPTROLLER OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

No. 758

THE PULLMAN COMPANY, APPELLANT,

vs.

A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND W. V. KNOTT, AS TREASURER OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR APPELLANT.

GUSTAVUS S. FERNALD,
ATTORNEY FOR APPELLANT.

FRANK B. KELLOGG,
OF COUNSEL.

BARNARD & MILLER PRINT, CHICAGO.

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